

No. 11797

United States
Circuit Court of Appeals
For the Ninth Circuit.

STATE OF CALIFORNIA,
vs.
UNITED STATES OF AMERICA,
Appellant,
Appellee.

STATE OF CALIFORNIA,
vs.
UNITED STATES OF AMERICA,
Appellant,
Appellee.

STATE OF CALIFORNIA,
vs.
UNITED STATES OF AMERICA,
Appellant,
Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

FILED
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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorney for Plaintiff and Appellee.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 22147-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

230.5 ACRES OF LAND in the City and County of
San Francisco, State of California, CARRIE F.
REDNALL, et al.,

Defendants.

COMPLAINT IN CONDEMNATION

Now comes the United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States and pursuant to the request of the Acting Secretary of the Navy, and for cause of action against the above-named defendants, alleges as follows:

I.

That this proceeding is instituted and the lands hereinafter described are taken pursuant to the provisions contained in the Act of Congress approved July 19, 1940 (Public Law No. 757, 76th Congress, 3rd Session), which Act authorizes the acquisition of land for naval purposes, and the Second War Powers Act of 1942 (S. 2208, 77th Congress, 2nd Session).

II.

That the lands hereinafter described are taken and condemned under the authority of the above-mentioned Act of Congress, for the uses and purposes authorized by said act and are sought and taken for the expansion of facilities at the present Naval Dry Docks Hunters Point, San Francisco, California, and are suitable and necessary for said purpose; that said use of said lands constitutes a public use and said lands have been selected by the Secretary of the Navy for the acquisition for said purposes and uses above stated and are required for immediate use in order that the necessary work may be begun thereon for carrying out said purposes and uses.

III.

That the acquisition of said lands by plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been appropriated for public use by said plaintiff, or the State of California, or any political subdivision thereof.

IV.

That the estate or interest which plaintiff seeks to take and condemn in the lands hereinafter described is the fee simple title to said lands, hereinafter described. [4*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

V.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the lands sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said lands and any damages resulting therefrom.

VI.

That the lands to be taken and condemned in this proceeding aggregate 230.5 acres, more or less are situate in the City and County of San Francisco, State of California, and more particularly described as follows:

Beginning at the point of intersection of the northeasterly line of Oakdale Ave. and the southeasterly line of Fitch Street, said point also being the northwesterly corner of Block 4725 as shown on that certain map entitled "Naval Dry Docks, Hunters Point, California, Acquisition of Land," Numbered C-1892-5 and prepared by the Public Works Administration and from said point of beginning southeasterly along the northeasterly line of Oakdale Ave. and the projection thereof to a point which is the point of intersection of the line projected from the northeasterly line of Oakdale Ave. and the United States Bulkhead Line; thence in a northeasterly direction along said United States Bulkhead Line to a point which is the point of intersection of the United States Bulkhead Line and the southwesterly boundary line of the Hunters

Point Naval Dry Docks; thence northwesterly along said southwest boundary line to a point which is the most westerly corner of the lands of said Hunters Point Naval Dry Docks; thence northeasterly along the northwesterly boundary line of Hunters Point Naval Dry Docks to a point which is the point of intersection of said northwesterly boundary line and the United States Bulkhead Line; thence along said United States Bulkhead Line to a point which is the point of intersection of said United States Bulkhead Line and the southeasterly line of Coleman Street; thence southwesterly along the southeasterly line of said Coleman Street to a point which is the [5] point of intersection of said southeasterly line of Coleman Street and the southwesterly line of McKinnon Ave.; thence northwesterly along the southwesterly line of McKinnon Ave. to a point which is the point of intersection of the southwesterly line of McKinnon Ave. and the southeasterly line of Earl Street; thence southwesterly on the southeasterly line of Earl Street to a point which is the point of intersection of said southeasterly line of Earl Street and the southwesterly line of Newcomb Ave.; thence northwesterly on the southwesterly line of Newcomb Ave. to a point which is the point of intersection of the southwesterly line of Newcomb Ave. and the southeasterly line of Fitch Street; thence southwesterly along the southeasterly line of Fitch Street to a point which is the point of intersection of the southeasterly line of Fitch Street and the northeasterly line of Oakdale Ave., said point being the point of beginning, containing 230.5 acres, more or less.

VII.

That a plan showing the lands taken as above described is attached hereto, marked Exhibit "A," and made a part hereof by reference.

VIII.

That plaintiff is informed and believes and therefore alleges that none of said lands taken by this proceeding are a part of any larger tract belonging to the apparent owners of said lands herein described.

IX.

Each of the defendants above named claims to be the owner of a portion of the property subject of this action, or has or claims to have some interest therein.

X.

That so far as is known to plaintiff, the only persons, firms or corporations having or claiming any interest in the above-described property, and who are therefore joined as defendants, are the following: City and County of San Francisco, and State of California. [6]

XI.

That the defendants Second Doe to Twenty-fifth Doe, inclusive, and First Doe Corporation to Twentieth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to plaintiff, but the plaintiff will, upon ascertaining their true

names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the Court; that said defendants, and each of them, may have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to plaintiff.

XII.

That the Acting Secretary of the Navy has determined that it is necessary, advantageous and in the interest of the United States that an order be obtained from this Court authorizing said Navy Department to take immediate possession of the above-described lands to the extent of the interest above-described, and the above-mentioned Special Assistant to the Attorney General has been authorized and directed by the Attorney General of the United States to take proper proceedings herein to acquire such order from this Honorable Court.

Wherefore, plaintiff prays:

1. For an order authorizing and directing the United States to take immediate possession of the above-described lands.

2. For judgment:

- (a) Decreeing that said lands above described, to the extent of the title and interest which plaintiff seeks to acquire by this action, are condemned for necessary public uses of the plaintiff as authorized by law; that all of said lands are necessary and suitable thereto;

(b) Determining the value of the lands subject of this action and each separate interest therein and directing the payment for each separate interest to the persons entitled thereto.

3. For such other and further relief as the Court may deem meet and proper in the premises.

M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General. [7]

(Verification.)

[Endorsed]: Filed Apr. 4, 1942. [8]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, STATE OF
CALIFORNIA

Comes now the defendant, State of California, one of the defendants in the above action, and for answer to plaintiff's complaint herein, affirms, denies and alleges as follows:

I.

Denies the allegations contained in paragraph I of plaintiff's complaint herein.

II.

Denies the allegations contained in paragraph II of plaintiff's complaint herein, and in this connection alleges:

That it is not necessary, for the purposes mentioned in said paragraph II, to acquire the subsurface estate, consisting of the mineral and mineral rights, in and to the property condemned herein; that the acts referred to in said paragraphs I and II of the complaint herein do not authorize the condemnation or taking of minerals and mineral rights in property where such taking or condemnation is not essential to the uses and purposes for which the property is condemned.

That Section 6401 of the Public Resources Code of the State of California provides that in the disposal of all tide and submerged lands, belonging to the State of California, there be reserved to the State the mineral deposits and mineral rights in lands authorized to be sold.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of minerals and mineral rights. A certified copy of said resolution is attached hereto and made a part hereof and for reference is marked Exhibit "A."

III.

Denies the allegations of Paragraph III of plaintiff's complaint herein. [9]

IV.

Admits as alleged in paragraph IV that the estate or interest which plaintiff seeks to condemn in the lands described in the complaint is the fee simple title thereto but in this connection this defendant

alleges that such estate or interest is not necessary for the purposes mentioned in paragraphs I and II of the complaint; that it is not necessary to condemn the minerals and mineral rights in said described lands.

V.

Respecting the allegations in paragraph V of plaintiff's complaint herein, defendant, State of California, has no information or belief upon the subject and, placing its denial upon said ground, denies the allegations therein contained.

VI.

Admits the allegations of paragraph VI of plaintiff's complaint herein.

VII.

Admits that the defendant, State of California, has and claims an interest in the property subject to suit, as alleged in paragraph X of plaintiff's complaint herein, and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date California was admitted into the and became a member of the Union of States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its

Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent is hereinafter, for convenience, referred to as the "Stanford" patent. That thereafter, and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide [10] Lands Belonging to the State of California." That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the completion of such preliminary survey, the said Board was directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into lots and blocks with reservations of so much thereof for streets, docks, piers, slips, canals, drains or other uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which Map

was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent, hereinbefore referred to, granted to the said South San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to the Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as the property of the said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as delineated on said Map. That in and by said survey, there were further laid out, established, reserved and dedicated certain Basins, among which is that area known as Dry Dock Basin. That there were also laid out and established by said survey blocks and lots surrounded by areas delineated upon the said Map as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County [11] of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses necessary for public convenience and purposes of commerce. That none of the lands lying within the said Dry Dock Basin has ever been conveyed by the State of California; that none of the lands lying outside the line of the "Stanford" patent to the South San Francisco, Homestead and Railroad Association and within the areas designated as

Streets and Avenues upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" has ever been conveyed or dedicated by the State of California, by the State Board of Tide Land Commissioner, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise. That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged land situated between the said Water Line Front and easterly line of Water Front Street and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff's complaint herein embraces the following lands:

(1) That area known and designated as Dry Dock Basin;

(2) The Lands Lying Bayward of Water Line Front and the easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(3) The lands lying outside the line of the "Stanford" patent and delineated upon the "Map of Salt Marsh and Tide Lands and lands Lying Under Water" as Streets and Avenues.

That the defendant, State of California, is the owner of and was, at the time of the filing of the complaint herein, entitled to the possession of such lands.

That the lands above referred to are hereinafter referred to as parcels #1, #2, #3A and #3B. [12]

That the said Parcel #1 contains all of the area comprising Dry Dock Basin, together with the land lying Bayward of the Water Line Front and easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line; that said area is more particularly described as follows:

Commencing at the intersection of the northeasterly extension of the southeasterly line of Coleman Street and the United States Bulkhead Line; thence along said United States Bulkhead Line southeasterly to the northwesterly line of the Hunters Point Naval Dry Docks; thence southwesterly along said northwesterly line to the "Stanford" patent line; thence westerly along said "Stanford" patent line to the southeasterly line of China Street; thence northeasterly along the southeasterly line of China Street to the easterly line of Water Front Street; thence northerly along the easterly line of Water Front Street to said northeasterly extension of the southeasterly line of Coleman Street; thence northeasterly along said northeasterly extension to the point of commencement, containing 7.84 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #1 is \$7000.02.

That Parcel #2 contains that area lying Bayward of the line of the Water Line Front and easterly line of Water Front Street and situate between

such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

Commencing at the intersection of the United States Bulkhead Line and the southwesterly boundary line of the Hunters Point Naval Dry Docks; thence southerly along said United States Bulkhead Line to the southeasterly extension of the northeasterly line of Oakdale Avenue; thence northwesterly along said line of Oakdale Avenue to the easterly line of Water Front Street; thence in a general northerly direction along the easterly line of Water Front Street, being the Water Line Front, to the southwesterly boundary line of the Hunters Point Naval Dry Docks; thence along said line of the Hunters Point Naval Dry Docks southeasterly to the point of commencement containing [13] 12.72 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #2 is \$13,357.18.

That Parcel #3A contains that area shown on the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association, and delineated upon said Map as Streets and Avenues, and is more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Coleman Street, on the north and east by the Water Line Front and on the south by the "Stanford" patent line, containing 6.85 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3A is \$6116.10.

That Parcel #3B contains that area shown on the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association, delineated upon said Map as streets and avenues, and is more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the east by the Water Line Front, on the south by the northeasterly line of Oakdale Avenue, on the west by the "Stanford" patent line, and on the north by the southwesterly line of the Hunter's Point Naval Dry Docks, containing 28.13 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3B is \$25,116.15.

That a copy of the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" is attached hereto, marked Exhibit "B," and made a part hereof by reference. That the said Exhibit "B" shows the line of the "Stanford" patent, hereinbefore referred to, and shows, delineated in red, the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays: [14]

(1) That the Court assess the sum of \$49,589.44 and award the same to the defendant, State of Cali-

fornia, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the Court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 4th day of April, 1942, to such extent; be modified;

(4) That the Court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,
Attorney General,
State of California.

By NIEL CUNNINGHAM,
JOHN F. HASSLER, JR.,
Deputies Attorney General.

Dated December 6, 1943, San Francisco.

(Acknowledgment of receipt of copy.) [15]

No. 1017

Division of State Lands
State Lands Commission, State of California
Los Angeles

The undersigned, acting in this behalf for the State Lands Commission, does hereby certify that the annexed document is a true and correct copy of a Resolution adopted by the State Lands Commis-

sion on November 4, 1943, on file in the office of the State Lands Commission; that said copy has been compared by the undersigned with the original, and is a correct transcript therefrom.

In Witness Whereof, the undersigned has executed this certificate and affixed the seal of the State Lands Commission, this 19th day of November, A.D. 1943.

[Seal]

CARLILE F. LYNTON,
Executive Officer,
State Lands Commission.

[Endorsed]: Filed Dec. 6, 1943. [16]

EXHIBIT "A"

RESOLUTION

Whereas, The Sovereign State of California has in many instances in the Past conveyed by grant, deed or under court decree lands belonging to the Sovereign State of California and,

Whereas, the Sovereign State of California has failed in most instances to reserve to the Sovereign State of California, the mineral which might have been contained in such conveyed lands, and,

Whereas, the people of the Sovereign State of California have been deprived of revenue which might have accrued to their benefit had such minerals been reserved, and,

Whereas, Section 6401 of the Public Resources Code of the State of California specifically pro-

vides for a reservation to the Sovereign State of California of all mineral deposit in lands belonging to the State of California,

Now, Therefore, be it resolved, that the State Lands Commission does hereby record itself as being opposed to any further conveyance of State Lands to the Federal Government without insisting upon reserving to the State of California, the minerals which might be contained therein, and

Be It Further Resolved, that the Executive Officer of the State Lands Commission be instructed to present to the Honorable Robert W. Kenny, Attorney General of the State of California, a copy of this resolution, together with a request that the Attorney General's office from this date henceforth shall demand reservation to the Sovereign State of California of all deposits of coal, phosphate, sodium, gold, silver, oil, gas, oil shale, or other hydrocarbons and all other mineral deposits which might be contained within any State Lands which the Federal Government seeks to condemn or otherwise acquire.

November 4, 1943.

STATE LANDS COMMISSION,
J. F. HASSLER, [17]
Chairman.

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANT,
STATE OF CALIFORNIA

Comes now the defendant, State of California, one of the defendants in the above action, and for answer to plaintiff's complaint herein, affirms, denies and alleges as follows:

I.

Denies the allegations contained in paragraph I of plaintiff's complaint herein.

II.

Denies the allegations contained in paragraph II of plaintiff's complaint herein, and in this connection alleges:

That the sub-surface estate in the minerals and mineral rights in the property condemned herein are not among the uses and purposes of the Act referred to in paragraphs I and II of plaintiff's complaint herein, and are not suitable and necessary for the purposes of condemnation alleged in such [18] complaint.

That Section 6401 of the Public Resources Code of the State of California specifically provides that in the disposal of all tide and submerged lands there be reserved to the State of California mineral deposits in lands belonging to the State of California.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of

minerals and mineral rights. A certified copy of said resolution attached to the Answer of defendant, State of California as Exhibit "A" and is by this reference incorporated herein.

III.

Denies the allegations of Paragraph III of plaintiff's complaint herein.

IV.

Admits the allegations contained in Paragraph IV of plaintiff's complaint herein.

V.

Respecting the allegations in Paragraph V of plaintiff's complaint herein, defendant, State of California, has no information or belief upon the subject and, placing its denial upon said ground, denies the allegations therein contained.

VI.

Admits the allegations of Paragraph VI of plaintiff's complaint herein.

VII.

Denies the allegations of Paragraph VIII of plaintiff's complaint herein.

VIII.

Admits the allegations of Paragraph IX of plaintiff's [19] complaint herein.

IX.

Admits that the defendant, State of California, has and claims an interest in the property subject to suit, as alleged in paragraph X of plaintiff's complaint herein, and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date California was admitted into and became a member of the Union of States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent is hereinafter, for convenience, referred to as the "Stanford" patent. That thereafter, and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California." That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the

completion of such preliminary survey, the said Board was directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into lots and blocks with reservations of so much thereof for [20] streets, docks, piers, slips, canals, drains or other uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which Map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent, hereinbefore referred to, granted to the said South San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to and Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as the property of the said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as delineated on said Map. That in and by said survey, there were further laid out, established,

reserved and dedicated certain Basins, among which is that area known as Dry Dock Basin. That there were also laid out and established by said survey blocks and lots surrounded by areas delineated upon the said Maps as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses necessary for public convenience and purposes of commerce. That none of the lands lying within the said Dry Dock Basin has ever been conveyed by the State of California; that none of the lands lying outside the line of the "Stanford" [21] patent to the South San Francisco Homestead and Railroad Association and within the areas designated as Streets and Avenues upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" has ever been conveyed or dedicated by the State of California, by the State Board of Tide Lands Commissioners, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise. That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged lands situated between the said Water Line Front and easterly line of Water Front Street and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff's complaint herein embraces the following lands:

(1) That area known and designated as Dry Dock Basin;

(2) The Lands lying Bayward of Water Line Front and easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(3) The lands lying outside the line of the "Stanford" patent and delineated upon the "Map of Salt Marsh and Tide *Lands Lying Under Water*" as Streets and Avenues.

That the defendant, State of California, is the owner of and was, at the time of the filing of the complaint herein, entitled to the possession of such lands.

That the lands above referred to are hereinafter referred to as Parcels #1, #2, #3A and #3B. [22]

That the said Parcel #1 contains all of the area comprising Dry Dock Basin, together with the land lying Bayward of the Water Line Front and easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line; that said area is more particularly described as follows:

Commencing at the intersection of the northeasterly extension of the southeasterly line of Coleman Street and the United States Bulkhead Line; thence along said United States

Bulkhead Line southeasterly to the northwesterly line of the Hunters Point Naval Dry Docks; thence southwesterly along said northwesterly line to the "Stanford" patent line; thence westerly along said "Stanford" patent line to the southeasterly line of China Street; thence northeasterly along the southeasterly line of China Street to the easterly line of Water Front Street; thence northerly along the easterly line of Water Front Street to said northeasterly extension of the southeasterly line of Coleman Street; thence northeasterly along said northeasterly extension to the point of commencement, containing 7.909 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #1 is \$7630.02.

That Parcel #2 contains that area lying Bayward of the line of the Water Line Front and easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

Commencing at the intersection of the United States Bulkhead Line and the southwesterly boundary line of the Hunters Point Naval Dry Docks; thence southerly along said United States Bulkhead Line to the southeasterly extension of the northeasterly line of Oakdale Avenue; thence northwesterly along said line

of Oakdale Avenue to the easterly line of Water Front Street; thence in a general northerly direction along the easterly line of Water Front Street, being the Water Line Front, to the southwesterly boundary line of the Hunters Point Naval Dry Docks; thence along said line of the Hunters Point Naval Dry Docks southeasterly to the point of commencement, containing 13.376 acres, more or less. [23]

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #2 is \$14,045.07.

That Parcel #3A contains that area shown on the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association, and delineated upon said Map as Streets and Avenues, and is more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Coleman Street, on the north and east by the Water Line Front and on the south by the "Stanford" patent line, containing 6.85 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3A is \$616.10.

That Parcel #3B contains that area shown on the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association, delineated upon said Map as streets and avenues, and is more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the east by the Water Line Front, on the south by the northeasterly line of Oakdale Avenue, on the west by the "Stanford" patent line, and on the north by the southwesterly line of the Hunters Point Naval Dry Docks, containing 28.13 acres, more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3B is \$25,116.15.

That a copy of the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" is attached to the Answer of [24] defendant, State of California, as Exhibit "B" and is by this reference incorporated herein. That the said Exhibit "B" shows the line of the "Stanford" patent, herein before referred to, and shows, delineated in red, the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays:

(1) That the court assess the sum of \$52,907.34 and award the same to the defendant, State of Cali-

fornia, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 4th day of April, 1942, to such extent be modified.

(4) That the court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,
Attorney General of the
State of California,

/s/ HAROLD B. HAAS,
Deputy Attorney General,

/s/ MIRIAM E. WOLFF,
Deputy Attorney General,
Attorneys for defendant,
State of California.

[Affidavit of service.]

[Endorsed]: Filed June 21, 1946. [25]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division.

No. 22147-R

UNITED STATES OF AMERICA,
Plaintiff,

vs.

230.5 ACRES OF LAND in the City and County
of San Francisco, State of California, CAR-
RIE F. REDNALL, et al.,
Defendants.

No. 22261-G

UNITED STATES OF AMERICA,
Plaintiff,

vs.

193 ACRES OF LAND, City and County of San
Francisco, State of California, MATILDA
PRIOR ANDREWS II, et al.,
Defendants.

No. 22416-R

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, et al.,
Defendants.

STIPULATION AS TO MARKET PLACES

Whereas title to the lands lying within the tide blocks 733 and 734, as the same are delineated upon the "Map of Salt Marsh and Tidelands and Lands Lying Under Water," was claimed, each for itself, by defendant State of California and defendant City and County of San Francisco at the time the above action number 22261 was filed by the United States of America; and is now so claimed; and

Whereas it appears that there are no other claims of title to the lands so delineated; and

Whereas it appears advisable and to the best interests of the parties that said claims be compromised without the necessity of further litigation in respect thereto;

Now, Therefore, the said defendants do hereby stipulate as follows:

I.

Each of said defendants claims that it held legal title to and was entitled to the possession of said lands so delineated at the time the same were condemned in the above cause.

II.

Each of said defendants agrees that it will release and discharge by whatever means may be re-

quired by the United States of America or the above court all its right, title, and interest in and to said land as so delineated upon receipt by it of one-half of the amount mutually agreeable to said defendants and offered by the United States of America, or one-half of such amount as the court awards as the value of the said land so delineated.

III.

This stipulation is an agreement of compromise between the said defendants and may be filed in court in the above cases if desired by the United States of America or the court. [25-B]

IV.

It is prayed that the court make no adjudication of title as between said defendants in respect to said land so delineated, except that the title thereto was disputed by said defendants and that the entire title thereto at the time of condemnation lies between the said defendants.

V.

The defendant City and County of San Francisco stipulates that it withdraws any and all claim of title heretofore made to any of the streets involved in the condemnation in the above causes.

Dated June, 1946.

/s/ ROBERT W. KENNY,
Attorney General of the
State of California,

/s/ HAROLD B. HAAS,
Deputy Attorney General,

/s/ MIRIAM E. WOLFF,
Deputy Attorney General,
Attorneys for Defendant,
State of California.

/s/ JNO. J. O'TOOLE,
City Attorney, City and
County of San Francisco,

/s/ REYNALD J. BIANCHI,
Deputy City Attorney,
City and County of
San Francisco,
Attorneys for Defendant,
City and County of
San Francisco.

[Endorsed]: Filed July 4, 1947. [25-C]

[Title of District Court and Causes.]

STIPULATION ENTERED INTO AT THE
TRIAL OF THE ABOVE CAPTIONED
CASE

Mr. Healy: May it please your Honor, your Honor will recall this trial was to have commenced about three weeks ago, and just after getting started, because of another case, this matter was continued until today. Your Honor requested that counsel make every effort possible to stipulate to as many facts as we could, so that we could simplify the issues.

We have agreed upon certain facts, and they were drawn up. The State drew up the stipulation; and certain portions we were not able to agree with until a short time ago, and with certain amendments made by our office, these facts will read as follows. A little later we will have this document transcribed and presented to your Honor.

The facts we now stipulate to are as follows:

That prior to September 9, 1850, a portion of the land subject to this action, and all of the lands claimed by the State of California, were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date, California was admitted into and became a member of the union of states, upon an equal footing with the original states in all respects, and thereupon and by that fact acquired title to all tide and submerged lands involved in these cases; that said Act of 1868, page

716, created a Board of Tide Land Commissioners, and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and to cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide; that after the completion of such preliminary survey, the Board was directed to establish the Water Line Front of San Francisco, and cause all of the property belonging to the State lying south of Second Street, within the said County to be surveyed into lots and blocks.

That the said Act further authorized and directed the said Board to prepare maps of the area as resurveyed and to cause the lots as so established to be sold at public auction; that pursuant to said Act, the Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869.

That none of the land claimed by the State of California in these answers had been reclaimed at the time said actions were commenced and that all of the land so claimed was tide or submerged lands.

It is further stipulated that the acreage claimed by the State of California in Action No. 22416-R, Parcel No. 1 as described in the amended answer filed by the State is 0.79 acres, and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and

the parties pray that the court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22416-R, in Parcel No. 2 as described in the amended answer filed by the State, the State of California claims 8.73 acres, and the parties do stipulate that 8.73 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in Action No. 22416-R, Parcel No. 3 as described in the amended answer filed by the State, the State has been paid its damages and the matter is not at issue as to that parcel.

That in Action No. 22147-R, Parcel No. 1 as described in the amended answer filed by the State, the State of California claims 7.909 acres, and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and the parties pray that the Court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22147-R, Parcel No. 2 as described in the amended answer filed by the State, the State of California claims 13.476 acres and the parties do stipulate that 13.376 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California. [28]

That in Action No. 22147-R, Parcel No. 3A as described in the amended answer filed by the State, the State of California claims 6.85 acres, and the

parties do stipulate that 6.85 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in Action No. 22147-R, Parcel No. 3B as described in the amended answer filed by the State, the State of California claims 28.13 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

It is further stipulated that the acreage claimed by the State of California in Action No. 22261-R, Parcel No. 1 as described in the amended answer filed by the State is 1.884 acres, and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and the parties pray that the court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22261-R, Parcel No. 2 as described in the amended answer filed by the State, the State of California claims 64.61 acres, and the parties so stipulate that 64.61 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in action No. 22261-R, Parcels Nos. 3A and 3B, the United States of America is compromising the claims of both the State of California and the City and County of San Francisco, and the parties pray that as to said parcels the court continue this hearing until a stipulation for judgment is filed.

That the matters relevant to the causes and not herein stipulated may be heard and determined at the trial on said parcels.

I may say to your Honor now the portions that the gentleman has been pointing to while I have been giving to your Honor the facts stipulated to, all of the portions that appear in blue or, I should say, all of the portions other than in pink, are matters that we have agreed upon, and there is no issue, and your Honor will not be troubled to decide those. Your Honor will be only concerned with the portions [29] in pink on this large map.

Those, your Honor, after considerable conferences and meetings, we believe are the facts we are able to stipulate on, and the other points of the case, I think, are at issue. Is that correct, Mr. Haas?

Mr. Haas: That is correct, your Honor. This map has been set up so that it can be clearly seen that the only things we are here litigating about are the areas colored in pink. All of the rest have been compromised out and are not at issue.

The Court: Very well.

Mr. Haas: It will be stipulated that with the exception of the market places, the lots and blocks inside the street lines were sold off to private individuals and corporations, and that the dispute is over whether or not the street areas were sold off. At least, that is contended, apparently, that they were.

Mr. Healy: I just wanted to know whether we understand each other on this. I am not asking anything about the streets now, because that is something for the Court to determine, but it is an agreed fact, is it not, Counsel, that the area between

the streets, the lot and block area, was sold off to private ownership, to private owners, pursuant to the statute of 1868 by the Board of Tide Land Commissioners? That is so, is it not?

Mr. Haas: That is so, of course, subject to further evidence that we intend to put in as to the method of selling.

Mr. Healy: We won't talk about the method of selling, but it was sold. Did I state it fairly and accurately?

Mr. Haas: I can't speak for the State. So far as our records show.

Mr. Healy: That is an agreed fact in the case?

Mr. Haas: Yes.

Mr. Healy: All right. That is all.

And the area that I was talking about is the area that is embraced [30] within the confines of these three actions.

Mr. Haas: That is that portion of the area embraced within the confines of these three actions——

Mr. Healy: Other than the Stanford Grant.

Mr. Haas: I was going to say it was the Tide Land. We are making no claims to the central part, the Stanford grant.

[Endorsed]: Filed July 12, 1946. [31]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division.

No. 22147-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

230.5 ACRES OF LAND in the City and County
of San Francisco, State of California, CAR-
RIE F. REDNALL, et al.,

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action was consolidated for trial with United States vs. 193 acres of land in the City and County of San Francisco, State of California, Civil 22261-R, and United States vs. Certain land in the City and County of San Francisco, State of California, Civil No. 22416-R, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche presiding, a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr., and J. Harold Weise, Special Attorneys, appearing for the plaintiff, United States of America, and Robert W. Kenny, Attorney General of the

State of California, Harold B. Haas and Miriam E. Wolff, Deputies Attorney General, appearing for the State of California, and the evidence having been duly taken and heard and the cause submitted for decision, the Court makes and files its Findings of Fact and Conclusions of Law as follows: [32]

I.

That the Complaint in the above entitled action was filed on the 4th day of April, 1942; that on the 22nd day of April, 1942, plaintiff filed a Declaration of Taking and deposited in the Registry of the Court, the sum of Seven Hundred Fifty-five Thousand Three Hundred and 86/100 Dollars (\$755,300.86) estimated just compensation for the taking of the property the subject of this action of which said sum One and no/100 Dollar (\$1.00) was deposited for the taking of Parcels 3A and 3B as hereinafter more particularly described. That on said day April 22, 1942, a Judgment on said Declaration of Taking was entered decreeing that the title to all the land subject of the above entitled proceeding, including the land herein referred to as Parcels 3A and 3B and hereinafter more particularly described, vested in the United States of America in fee simple and the right to just compensation therefor vested in the persons entitled thereto upon the filing of said Declaration of Taking.

II.

That the above entitled action was instituted and the lands the subject matter of said action are

taken and condemned pursuant to, and under the authority of the Act of Congress approved July 19, 1940 (Public Law No. 757, 76th Congress, Third Session), which act authorizes the acquisition of land for Naval purposes and the Second War Powers Act of 1942 (S2208, 77th Congress, Second Session).

III.

That said lands were taken and condemned under the authority of the above mentioned acts of Congress for the expansion of facilities at the Naval Drydock, Hunters Point, San Francisco, California, and are suitable and necessary for said purpose; that said use of said lands constitutes a public use, and that the acquisition of said lands by plaintiff was of the greatest public benefit and the least private injury.

IV.

That service has been properly made upon all persons interested in said lands hereinafter described: [33]

V.

That prior to September 9, 1850, the lands subject of this trial were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date, California was admitted into and became a member of the union of states, upon an equal footing with the original states in all respects, and thereupon and by that fact acquired title to all tide and submerged lands involved in this

trial; that the Act of 1868 (Stats. of Cal. 1867-68, page 716) created a Board of Tide Land Commissioners, and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and to cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide; that after the completion of such preliminary survey, the Board was directed to establish the Water Line Front of San Francisco, and cause all of the property belonging to the State lying south of Second Street, within the said County to be surveyed into lots and blocks.

That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed and to cause the lots as so established to be sold at public auction; that pursuant to said Act, the Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which map was duly adopted by the said Board of Tide Land Commissioners on March, 1869.

That none of the land claimed by the State of California in this action had been reclaimed at the time said action was commenced and that all of the land so claimed was tide or submerged lands.

VI.

That pursuant to said statute, said Tide Land Commissioners sold, at public auction, all the right, title, and interest of defendant, State of California,

in and to the property in said lots exhibited on said map and said sales were by lots in accordance with said survey and map.

VII.

That said Parcels 3A and 3B, respectively, embrace and are a portion [34] of certain streets and alleys exhibited and delineated upon said map, "Map of Salt Marsh and Tide Lands and Lands Lying Under Water."

VIII.

That the interest or title that defendant, State of California, retained in said Parcels 3A and 3B, respectively, was retained only for the purpose of providing ingress and egress to said lots sold and that the interest or title of defendant, State of California, in and to said parcels at the date of the taking herein was subject to easements for access to and from said lots exhibited and delineated upon said survey and map.

IX.

That Parcel 3A is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Coleman Street, on the north and east by the Water Line Front and on the south by the "Stanford" patent line, containing 6.85 acres, more or less.

That just compensation for said parcel including any and all damages to the larger tract of which said Parcel 3A is a part is the sum of One and no/100 Dollar (\$1.00).

X.

That Parcel 3B is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the east by the Water Line Front, on the south by the northeasterly line of Oakdale Avenue, on the west by the "Stanford" patent line, and on the north by the southwesterly line of the Hunters Point Naval Drydocks, containing 28.13 acres, more or less.

That just compensation for said parcel including any and all [35] damages to the larger tract of which said Parcel 3B is a part is the sum of One and no/100 Dollar (\$1.00).

XI.

Except as hereinbefore more particularly set forth all of the allegations, the Plaintiff's Complaint are true.

XII.

Except as hereinbefore more particularly set forth all the allegations of the answer and amended answer of defendant, State of California, are not true.

Conclusions of Law

I.

That the Court has jurisdiction of the parties and the subject matter of this action.

II.

That the use for which the property is taken is a public use of the United States and that the United States is authorized by law to acquire the same by condemnation.

III.

That the damage suffered by the State of California for the taking of Parcel 3A is the sum of One and no/100 Dollar (\$1.00).

That the damage suffered by the State of California for the taking of Parcel 3B is the sum of One and no/100 Dollar (\$1.00).

IV.

That a Judgement of Condemnation in the form provided by law shall be made and entered herein.

V.

Let Judgment be entered accordingly.

Done in Open Court, this 22nd day of January, 1947.

MICHAEL J. ROCHE,
Judge.

Receipt of the foregoing Findings of Fact and Conclusions of Law is hereby acknowledged this 12th day of December, 1946.

ROBERT W. KENNY,
Attorney General of the
State of California,

By HAROLD H. HAAS,
Deputy Attorney General.

[Endorsed]: Filed Jan. 22, 1947. [36]

[Title of District Court and Cause.]

FINAL JUDGMENT AS TO PARCELS
3-A AND 3-B

The above entitled action was consolidated for trial with United States v. 193 Acres of land in the City and County of San Francisco, State of California, Civil 22261-R and United States v. Certain land in the City and County of San Francisco, State of California Civil No. 22416-R, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche presiding, a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr., and J. Harold Weise, Special Attorneys appearing for the plaintiff, United States of America, and

Robert W. Kenny, Attorney General of the State of California, Harold B. Haas and [37] Miriam E. Wolff, Deputies Attorney General, appearing for the State of California, and the evidence, both oral and documentary, having been introduced by the parties hereto and the case having been fully tried and presented to the Court, and briefs having been submitted by the respective parties and the cause having been submitted for decision on the 19th day of October, 1946, and the Court having heretofore filed its written Findings of Fact and Conclusions of Law;

Wherefore, by reason of the law and the findings herein.

It Is Hereby Ordered, Adjudged And Decreed:

I.

That the title to Parcels 3-A and 3-B of the lands subject of the above entitled action vested in the United States of America in fee simple absolute on the 22nd day of April, 1942.

II.

That Parcel 3-A is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Coleman Street, on the north and east by the Water Line Front and on the south by the "Stanford" patent line, containing 6.85 acres, more or less.

III.

That Parcel 3-B is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the east by the Water Line Front, on the south by the northeasterly line of Oakdale Avenue, on the west by the "Stanford" patent line, and on the north by the southwesterly line of the Hunters Point Naval Drydocks, containing 28.13 acres, more or less.

IV.

That the defendant State of California is awarded the sum of One Dollar for each of said Parcels 3-A and 3-B, respectively, [38] together with interest from the date of the entry of this Judgment until paid.

Done In Open Court, this 22nd day of January, 1947.

MICHAEL J. ROCHE,
Judge.

Approved as to form:

FRED N. HOWSER,
Attorney General of the
State of California.

By MIRIAM E. WOLFF,
Deputy Attorney General,
Attorney for the State of
California.

[Endorsed]: Filed and Entered Jan. 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Honorable Michael J. Roche, Judge of the District Court of the United States, Southern Division, Northern District of California, and to M. Mitchell Bourquin, Esq., Special Assistant to the Attorney General, and John H. Healy, Jr. and John Harold Weise, Esqs., Attorneys for Plaintiff:

You and each of you will please take notice that the defendant, State of California, hereby appeals, to the United States Circuit Court of Appeals, Ninth Judicial District, from that portion of the final judgment as to parcels 3-A and 3-B therein awarding defendant, State of California, the sum of One Dollar for its interest therein and denying defendant, State of California, any further or additional compensation for the taking of said property.

Dated: April 21, 1947.

/s/ FRED N. HOWSER,
Attorney General.

/s/ HAROLD B. HAAS,
Deputy Attorney General.

/s/ MIRIAM E. WOLFF,
Deputy Attorney General.
Attorneys for Defendant
State of California.

[Affidavit of service by mail.]

[Endorsed]: Filed April 21, 1947. [40]

In The District Court of the United States in
and for the Northern District of California,
Southern Division

No. 22147-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

230.5 Acres of Land in the City and County of San
Francisco, State of California, CARRIE F.
REDNALL, et al.,

Defendants.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

That Pacific Indemnity Company a corporation
duly organized and existing under and by virtue
of the laws of the State of California, and duly
licensed to transact a surety business in the State
of California, is held and firmly bound unto the
United States of America, plaintiff in the above
entitled action, in the sum of Two Hundred Fifty
and No/100 Dollars (\$250.00), to be paid unto said
United States of America, for which payment well
and truly to be made Pacific Indemnity Company
binds itself, its successors and assigns firmly by
these presents.

Signed, Sealed And Dated This 10th Day Of March, 1947.

The condition of the above obligation is such that [41] whereas State of California, defendant in the above entitled cause, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of the above entitled court entered in said cause on the 22nd day of January, 1947;

Now, Therefore the condition of the above obligation is such that is the said appellant, State of California, shall pay all costs if the said appeal is dismissed or the said judgment affirmed, or such costs as the appellate court may award if the said judgment is modified, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

It Is Further Stipulated as a part of the foregoing bond that in case of a breach of any condition thereof, the above named District Court may, upon notice to said surety of not less than ten days, proceed summarily in the above entitled action to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and award execution therefor.

PACIFIC INDEMNITY CO.

[Seal] By R. L. TRAVISS,
Attorney in Fact.

State of California,
City and County of San Francisco—ss:

On this 10th day of March in the year one thousand nine hundred and forty-seven before me, Emily K. McCorry a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared R. L. Traviss, known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said R. L. Traviss acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] EMILY K. McCORRY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 21, 1950.

[Endorsed]: Filed April 21, 1947. [42]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF EXHIBITS
TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT

It appearing to the court that the exhibits in the above entitled matter consist of maps, diagrams and original papers, not capable of reproduction in the printed record,

Now, Therefore, It Is Hereby Ordered that copies of the original papers and exhibits which were introduced in evidence during the trial of said cause need not be copied in the Record of Appeal in said cause to be filed in connection with the appeal of said defendant and appellant, and that all original papers and exhibits introduced in evidence at the trial of said cause in the above entitled court by plaintiff, United States of America, and defendant, State of California, [43] with respect to Parcels 3-A and 3-B, together with all the original papers and exhibits introduced in evidence at the trial of said action with respect to Parcel 2 of action 22261-R and Parcel 2 of action 22416-R, which actions were consolidated with the above entitled action for the purposes of trial, may be transferred and transmitted in their original form to the court to which said appeal is taken, namely, the United States Circuit Court of Appeals for the Ninth Circuit; and

It Is Further Ordered that all such original papers and exhibits shall be included in and be a part of the Record on Appeal to the same effect as though copied therein.

It Is Further Ordered that the said exhibits and testimony introduced in evidence at the trial of Parcels 3-A and 3-B of the above entitled action were also introduced in evidence with reference to Parcel 2 of action 22261-R and Parcel 2 of action 22416-R, which actions were consolidated with the above entitled action for the purposes of trial, and that the original papers and exhibits, all of which are the subject of this Order, may be considered by the court with like effect with reference to Parcel 2 of action 22261-R and Parcel 2 of action 22416-R.

Dated: July 29, 1947.

GEORGE B. HARRIS,

Judge of the U. S.

District Court.

[Endorsed]: Filed July 29, 1947. [44]

[Title of District Court and Cause.]

STIPULATION AND AGREEMENT FOR CONSOLIDATION

Whereas, this case with respect to Parcels 3-A and 3-B was consolidated with case 22261-G with respect to Parcel 2 of that case, and with case 22416-R with respect of Parcel 2 of that case, for purposes of trial, the evidence relating to each of the

above parcels being considered with reference to each of the other parcels; and judgment having been entered on January 22, 1947, in each of these cases as to each of these parcels in the amount of \$1.00 each, and the State of California having filed notice of appeal in each of these cases dated April 21, 1947, as to each of these judgments for each of the aforementioned parcels; and

Whereas, it is the intention of the State of California to appeal said cases to the Ninth Circuit Court of Appeals;

Therefore, it is hereby stipulated by the State of California, one of the Defendants herein, by Fred N. Howser, Attorney General of the State of California, and Harold B. Haas, Deputy Attorney General of the State of California, and Miriam E. Wolff, Deputy Attorney General of the State of California, and the United States of America, Petitioner, by J. Edward Williams, Acting Assistant Attorney General of the United States, and M. Mitchell Bourquin, Special Assistant to the Attorney General, that said causes, to wit: Civil Nos. 22147-R with respect to Parcels 3-A and 3-B 22261-G with respect to Parcel 2, and 22416-R with respect to Parcel 2, above designated, be consolidated as one cause for the purpose of appealing the same to the Ninth Circuit Court of Appeals. It is further agreed that but one appeal be prosecuted regarding such consolidated cases, and that the record be printed and treated as one, and that all considerations, orders, judgments and mandates

made by the Ninth Circuit Court of Appeals be effective in each case above described the same as if the appeal had been taken in each case individually.

Dated: this 27th day of August, 1947.

THE STATE OF CALIFORNIA,
Defendant.

By /s/ FRED M. HOWSER,
Attorney General of the State
of California.

/s/ HAROLD B. HAAS,
Deputy Attorney General of
the State of California.

/s/ MIRIAM E. WOLFF,
Deputy Attorney General of
the State of California.

UNITED STATES
OF AMERICA,
Petitioner.

By /s/ J. EDWARD WILLIAMS,
Acting Assistant Attorney General of the United
States of America.

M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General.

[Endorsed]: Filed August 27, 1947. [46]

[Title of District Court and Cause.]

ORDER CONSOLIDATING CAUSES
ON APPEAL

Upon the filing and reading of the Stipulation and Agreement to consolidate this case with respect to Parcels 3-A and 3-B with case 22261-G with respect to Parcel 2 of that case, and with case 22416-R with respect to Parcel 2 of that case for purposes of Appeal to the Circuit Court of Appeals for the Ninth Circuit, and good cause appearing therefore,

It is hereby ordered that said causes, to wit:

Civil Nos. 22147-R with respect to Parcels 3-A and 3-B, 22261-G with respect to Parcel 2, and 22416-R with respect to Parcel 2, above designated, be and the same are hereby consolidated as one cause for the purpose of appealing the same to the Ninth Circuit Court of Appeals, and it is further ordered [47] that but one appeal be prosecuted regarding such consolidated causes, and that the record be printed and treated as one and the same appeal.

Dated at San Francisco, California, this 28th day of August, 1947.

MICHAEL J. ROCHE,
Judge, United States
District Court.

FRANCIS A. GARRECHT,
Judge, Circuit Court
of Appeals.

[Endorsed]: Filed August 28, 1947. [48]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Comes Now Appellant, State of California, one of the defendants above named, and states that its appeal is from that portion of the judgment decreeing that the State of California is entitled to receive the sum of One and no/100 (\$1.00) Dollars and no more for the taking of parcel 3-A and the sum of One and no/100 (\$1.00) Dollars and no more for the taking of parcel 3-B, which was given, made and entered in the above entitled cause on the 22nd day of January, 1947, and that said appellant will rely on its appeal herein on the following points.

I.

That the above-named United States District Court erred in finding that the interest or title that defendant, State of California, retained in said parcels 3-A and 3-B was retained only for the purpose of providing ingress and egress to said lots sold.

II.

That the said Court erred in finding that the interest or title that defendant, State of California, retained in said parcels 3-A and 3-B at the date of the taking herein was subject to easements for access to and from said lots delineated upon said survey map.

III.

That the said Court erred in finding that just compensation for the taking of said parcels 3-A and 3-B, including any and all damages to the larger tract of which said parcels 3-A and 3-B are a part, is the sum of Two and no/100 (\$2.00) Dollars.

IV.

That the said Court erred in not finding that said property was never laid out upon the grounds as streets.

V.

That the said Court erred in not finding and in not concluding that the said property was never opened nor declared open as streets.

VI.

That the said Court erred in not finding and in not concluding that the said property was never dedicated as streets.

VII.

That the said Court erred in not finding and in not concluding that the said property was not subjected to any [50] easement as streets.

VIII.

That the said Court erred in rendering its decision and making and entering its judgment herein in that the evidence was and is insufficient to justify the judgment rendered by said Court.

IX.

That the said Court erred in rendering its decision and making and entering its judgment herein against the defendant, State of California, in that said judgment is contrary to the law and the facts.

X.

That the said Court erred in not making its judgment herein in favor of defendant, State of California and against plaintiff United States of America in the sum of \$31,232.25.

Dated: June 15, 1947.

FRED N. HOWSER,
Attorney General of the State
of California,

/s/ HAROLD B. HAAS,
Deputy Attorney General,

/s/ MIRIAM E. WOLFF,
Deputy Attorney General,
Attorneys for defendant
State of California.

[Endorsed]: Filed Sept. 4, 1947. [51] ,

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 22147-R

UNITED STATES OF AMERICA,

vs. Plaintiff,

230.5 Acres of land in the City and County of San
Francisco, State of California, CARRIE F.
REDNALL, et al.,

Defendants.

No. 22261-R

UNITED STATES OF AMERICA,

vs. Plaintiff,

193 Acres of land, City and County of San Fran-
cisco, State of California, MATILDA PRIOR
ANDREWS II, et al.,

Defendants.

No. 22416-R

UNITED STATES OF AMERICA,

vs. Plaintiff,

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, et al.,

Defendants. [52]

DESIGNATION OF THE PORTIONS OF THE
RECORD, PROCEEDINGS AND EVI-
DENCE TO BE CONTAINED IN THE
RECORD ON APPEAL

The following portions of the record, proceedings
and evidence in the above three cases are hereby

designated by appellant to be the portions of the record, proceedings and evidence to be contained in the record on appeal in this cause.

In action No. 22147-R:

- (1) Complaint;
- (2) Answer of Defendant, State of California;
- (3) Amended Answer of Defendant, State of California;
- (4) Stipulation entered into at the trial of the above-captioned case;
- (5) Stipulation as to Market Places entered into between the Defendant, State of California, and the Defendant, City and County of San Francisco;
- (6) Findings of Fact and Conclusions of Law, with respect to Parcels 3-A and 3-B;
- (7) Judgment as to Parcels 3-A and 3-B;
- (8) Notice of Appeal;
- (9) Bond for costs on Appeal;
- (10) All exhibits introduced by plaintiff United States of America and Defendant State of California with respect to Parcels 3-A and 3-B and all exhibits introduced by plaintiff United States of America and Defendant State of California with respect to Parcel 2 of action 22261-R and Parcel 2 of action 22416-R which actions were consolidated with the above-entitled action for the purposes of trial;
- (11) All testimony and proceedings of the trial with respect to Parcels 3-A and 3-B contained in the original Transcript of Testimony prepared by

the Official Court Reporter, together with all testimony and proceedings of the trial with respect to Parcel 2 of action 22261-R and Parcel 2 of action 22416-R, which actions were consolidated with the above-entitled action for the purposes of trial;

(12) Statement of Points on which Appellant intends to rely on appeal; [53]

(13) Order for transmission of exhibits to the United States Circuit Court of Appeals;

(14) Stipulation and agreement for consolidation;

(15) Order consolidating causes on appeal;

(16) This Designation;

(17) Clerk's Certificate.

In action No. 22261-R:

(18) Complaint and Order for immediate possession;

(19) Answer of Defendant, State of California;

(20) Amendment to Complaint;

(21) Amended Answer of Defendant, State of California;

(22) Findings of Fact and Conclusions of Law with respect to Parcel No. 2;

(23) Judgment as to Parcel No. 2;

(24) Notice of Appeal;

(25) Bond for Costs on Appeal;

(26) Statement of Points on which appellant intends to rely on appeal.

In action No. 22416-R:

(27) Complaint and Order for immediate possession;

(28) Answer of Defendant, State of California;

(29) Amended Answer of Defendant, State of California;

(30) Findings of Fact and Conclusions of Law with respect to Parcel No. 2;

(31) Judgment as to Parcel No. 2;

(32) Notice of Appeal;

(33) Bond for Costs on Appeal;

(34) Statement of points which appellant intends to rely on appeal.

Dated September 4, 1947.

FRED N. HOWSER,

Attorney General of the
State of California,

/s/ HAROLD B. HAAS,

Deputy Attorney General,

/s/ MIRIAM E. WOLFF,

Deputy Attorney General,
Attorneys for Defendant
State of California.

[Affidavit of mailing.]

[Endorsed]: Filed Sept. 4, 1947. [54]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 22261-W

UNITED STATES OF AMERICA,
Plaintiff,

vs.

193 ACRES OF LAND, City and County of San
Francisco, State of California, and MATILDA
PRIOR ANDREWS II, et al.,
Defendants.

COMPLAINT IN CONDEMNATION

Now comes the United States of America, by
M. Mitchell Bourquin, Special Assistant to the
Attorney General, at the direction and under the
authority of the Attorney General of the United
States, and pursuant to the request of the Acting
Secretary of the Navy, and for cause of action
against the above named defendants, alleges as
follows:

I.

That this proceeding is instituted and the lands
hereinafter described are taken pursuant to the
provisions contained in the Act of Congress ap-
proved January 29, 1942 (Public Law 420, 77th
Congress, 56 Stat., Chap. 25), and the Act of Con-
gress approved February 7, 1942 (Public Law 441,
77th Congress, 56 Stat., Chap. 46), appropriating
funds therefor.

II.

That the lands hereinafter described are taken and condemned under the authority of the above mentioned Acts of Congress for the uses and purposes authorized by said Acts, and are sought and taken for use in connection with the establishment of the Naval Dry Docks, Hunters Point, California, and are suitable and necessary for said purpose; that said use of said lands constitutes a public use, and said lands have been selected by the Acting Secretary of the Navy for acquisition for said purposes and uses above stated, and are required for immediate use in order that the necessary work may be begun thereon for carrying out said purposes and uses.

III.

That the acquisition of said lands by plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been [57] appropriated for public use by said plaintiff or for the State of California, or any political subdivision thereof.

IV.

That the estate or interest which plaintiff seeks to take and condemn is the fee simple title to the hereinafter described lands.

V.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just

compensation for the lands sought to be taken and condemned herein, in whatever sum may be ultimately awarded in this proceeding for the taking of said lands and any damages resulting therefrom.

VI.

That the lands to be taken and condemned in this proceeding aggregate 193 acres, are situate in the City and County of San Francisco, State of California, and are more particularly described as follows:

Beginning at the intersection of the Northeasterly line of Oakdale Avenue with the Southeasterly line of Donahue Street; thence Southeasterly along the Northeasterly line of said Oakdale Avenue to the U. S. Government Bulkhead line; thence Southerly along the said U. S. Government bulkhead line to its intersection with the Southwesterly line of Shafter Avenue; thence Northwesterly along the Southwesterly line of Shafter Avenue to its intersection with the Southeasterly line of Alvord Street; thence Southwesterly along the Southeasterly line of Alvord Street to its intersection with the Southwesterly line of Wallace Avenue; thence Northwesterly along the Southwesterly line of Wallace Avenue to its intersection with the Southeasterly line of Donahue Street; thence Northeasterly along the Southeasterly line of Donahue Street to the place of beginning, containing 193 acres, more or less.

VII.

That a plan showing the lands taken as above described is attached hereto, marked Exhibit "A", and made a part hereof by reference.

VIII.

That plaintiff is informed and believes and therefore alleges that none of said lands taken by this proceeding are a part of any larger tract belonging to the apparent or purported owners of said lands herein described.

IX.

That each of the defendants named in the title to this action may have or claim some interest in the above described land.

X.

That the defendants, City and County of San Francisco and State of California may have or claim some interest or lien in and to the above-described lands for taxes.

XI.

That the defendants First Doe to Fifteenth Doe, inclusive, and First Doe Corporation to Tenth Doe Corporation, inclusive, are used and designated herein by fictitious names for the reason that their true names are unknown to plaintiff, but the plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the

Court; that defendants, and each of them, may have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to plaintiff. [59]

XII.

That a state of war now exists between the plaintiff, United States of America, and certain foreign governments, and pursuant to the provisions of the Second War Powers Act, Public Law 507, 77th Congress, Second Session, approved March 27, 1942, the plaintiff, upon the filing of this Complaint in this proceeding, becomes entitled to the right to take immediate possession of the above described lands.

XIII.

That the Acting Secretary of the Navy has determined that it is necessary, advantageous and in the interest of the United States that an order be obtained from this Court authorizing said Navy Department to take immediate possession of the above described lands to the extent of the interest above described, and the above mentioned Special Assistant to the Attorney General has been authorized and directed by the Attorney General of the United States to take proper proceedings herein to acquire such order from this Honorable Court.

Wherefore, plaintiff prays:

1. For an order authorizing and directing the United States to take immediate possession of the above described lands.

2. For judgment:

(a) Decreeing that said lands above described, to the extent of the title and interest which plaintiff seeks to acquire by this action, are condemned for necessary public uses of the plaintiff as authorized by law; that all of said lands are necessary and suitable thereto;

(b) Determining the value of the lands subject of this action and each separate interest therein, and directing the payment for each separate interest to the [60] persons entitled thereto.

3. For such other and further relief as the Court may deem proper in the premises.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff. [61]

VERIFICATION

United States of America,
Northern District of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States and attorney for the plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein

stated on his information or belief, and as to those matters that he believes it to be true.

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign.

That the sources of affiant's information and the grounds for his belief are the official communications, records, files and documents received from the Attorney General of the United States, and from the Navy Department of the United States.

/s/ M. MITCHELL BOURQUIN.

Subscribed and sworn to before me this 25th day of July, 1942.

[Seal] LOUIS V. VASQUEZ,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 4, 1943.

[Endorsed]: Filed July 25, 1942. [62]

[Title of District Court and Cause.]

ORDER FOR IMMEDIATE POSSESSION

Upon reading the Complaint on file in the above entitled action, and it appearing that application has been made by plaintiff to be let into immediate possession of the lands subject of this action and hereinafter described, and to use said lands to the extent and for the purposes as alleged in said Complaint and to proceed thereon with the public works

authorized by Congress and directed by the Acting Secretary of the Navy:

Now, Therefore, It Is Ordered that the United States of America be, and it is hereby granted leave to take immediate possession of the lands subject of this action and hereinafter described, to the extent of the estate and interest to be acquired in this action, to-wit: the fee simple title to said lands for use in connection with the establishment of the Naval Dry Docks, Hunters Point, California, and for related military purposes, and to proceed thereon with such public works as have been authorized by Congress and directed by the Acting Secretary of the Navy.

And It Appearing that the United States of America has made adequate provision for the payment of just compensation to the parties entitled thereto by virtue of the appropriations made by Congress therefor, as set forth in the Complaint on file herein, it shall not be necessary for the United States to deposit any sum of money or other form of security for the purpose of securing payment of compensation to the parties entitled thereto.

The United States Marshal is hereby authorized and directed to place plaintiff in possession of said property.

Following is a particular description of the lands affected by this order, which said lands are situate

in the City and County of San Francisco, State of California: [65]

Beginning at the intersection of the Northeasterly line of Oakdale Avenue with the Southeasterly line of Donahue Street; thence Southeasterly along the Northeasterly line of said Oakdale Avenue to the U. S. Government bulkhead line; thence Southerly along the said U. S. Government bulkhead line to its intersection with the Southwesterly line of Shafter Avenue; thence Northwesterly along the Southwesterly line of Shafter Avenue to its intersection with the Southeasterly line of Alvord Street; thence Southwesterly along the Southeasterly line of Alvord Street to its intersection with the Southwesterly line of Wallace Avenue; thence Northwesterly along the Southwesterly line of Wallace Avenue to its intersection with the Southeasterly line of Donahue Street; thence Northeasterly along the Southeasterly line of Donahue Street to the place of beginning, containing 193 acres, more or less.

The Court reserves the right hereafter to make such other and further orders, judgments and decrees herein as may be necessary in the premises.

Done in open Court, this 25th day of July, 1942.

/s/ MICHAEL J. ROCHE,
Judge.

[Endorsed]: Filed July 25, 1942. [66]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 22261-W

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 ACRES OF LAND, City and County of San
Francisco, State of California, et al.,

Defendants.

ANSWER OF DEFENDANT, STATE OF
CALIFORNIA

Comes now the defendant, State of California,
one of the defendants in the above action, and for
answer to plaintiff's complaint herein, affirms, de-
nies and alleges as follows:

I.

Denies all the allegations contained in paragraph
I of plaintiff's complaint herein.

II.

Denies the allegations contained in paragraph II
of plaintiff's complaint herein, and in this connec-
tion alleges:

That it is not necessary, for the purposes men-
tioned in said paragraph II, to acquire the sub-
surface estate, consisting [67] of the mineral and
mineral rights, in and to the property condemned
herein; that the acts referred to in said paragraphs

I and II of the complaint herein do not authorize the condemnation or taking of minerals and mineral rights in property where such taking or condemnation is not essential to the uses and purposes for which the property is condemned.

That Section 6401 of the Public Resources Code of the State of California provides that in the disposal of all tide and submerged lands, belonging to the State of California, there be reserved to the State the mineral deposits and mineral rights in lands authorized to be sold.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of minerals and mineral rights. A certified copy of said resolution is attached hereto and made a part hereof and for reference is marked Exhibit "A."

III.

Denies the allegations of paragraph III of plaintiff's complaint herein.

IV.

Admits as alleged in paragraph IV that the estate or interest which plaintiff seeks to condemn in the lands described in the complaint is the fee simple title thereto, but in this connection this defendant alleges that such estate or interest is not necessary for the purposes mentioned in paragraphs I and II of the complaint; that it is not necessary to condemn the minerals and mineral rights in said described lands.

V.

Respecting the allegations contained in paragraph V of plaintiff's complaint herein, defendant, State of California, has no information or belief upon the subject, and, placing its denial upon said grounds, denies the allegations thereof. [68]

VI.

Admits the allegations of paragraph VI of plaintiff's complaint herein.

VII.

Admits that the defendant, State of California, has and claims an interest in the property subject to suit, as alleged in paragraph IX of plaintiff's complaint herein, and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date California was admitted into and became a member of the Union of States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent was recorded in the Office of the Recorder of the City and County of San

Francisco in Liber 1 of Patents, at page 44; that said patent is hereinafter, for convenience, referred to as the "Stanford" patent. That thereafter, and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California." That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the completion of such preliminary survey, the said Board was directed to establish the [69] Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into lots and blocks with reservations of so much thereof for streets, docks, piers, slips, canals, drains or other uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as resurveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which Map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent,

hereinbefore referred to, granted to the said South San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to and Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as the property of said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as delineated on said Map. That the said Board of Tide Land Commissioners, by resolution duly made and recorded, reserved and dedicated certain market places and produce exchanges; that among such market places were those areas delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as Tide Blocks 733 and 734. That said Tide Blocks 733 and 734 have never been conveyed by the defendant, State of California, the Board of Tide Land Commissioners, or any officer or department acting for or in behalf of either said defendant, State of California, or said Board of Tide Land Commissioners. [70] That there were also laid out and established by said survey blocks and lots surrounded by areas delineated upon the said Map as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses

necessary for public convenience and purposes of commerce; that none of the lands lying outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association and within the areas designated as Streets and Avenues upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" has ever been conveyed or dedicated by the State of California, by the State Board of Tide Land Commissioners, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise.

That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged lands situated between the said Water Line Front and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff's complaint herein embraces the following lands:

(1) The lands lying Bayward of Water Line Front and easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(2) The lands lying outside the line of the "Stanford" patent and delineated upon the "Map of Salt Marsh [71] and Tide Lands and Lands Lying Under Water" as Streets and Avenues.

(3) The lands lying within Tide Blocks 733 and 734, as the same are delineated upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water."

That the defendant, State of California, is the owner of and was, at the time of the filing of the complaint herein, entitled to the possession of such lands.

That the lands above referred to are hereinafter referred to as Parcels Nos. 1, 2, 3A and 3B.

That Parcel No. 1 contains that area lying Bayward of the line of the Water Line Front Street and situate between such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

"Commencing at the intersection of the United States Bulkhead Line with the southeasterly extension of the northeasterly line of Oakdale Avenue; thence southerly along said United States Bulkhead Line to its intersection with the southeasterly extension of the southwesterly line of Shafter Avenue; thence northwesterly along said southeasterly extension of the southwesterly line of Shafter Avenue to the southerly line of Water Front Street; thence along the southerly and easterly line of Water Front Street northerly to said southeasterly extension of the northeasterly line of Oakdale Avenue; thence along said southeasterly extension of the northeasterly line of Oakdale Avenue, southeasterly to the point of Commencement. Containing 1.93 acres more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 1 is \$1723.22.

That Parcel No. 2 contains that area shown on the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association, and delineated upon said Map as Streets and Avenues, and is more particularly described as follows: [72]

"All those certain streets and avenues lying within an area bounded on the north by the 'Stanford' patent line and the northeasterly line of Oakdale Avenue; on the east by the Water Line Front; on the south by the southwesterly line of Shafter Avenue, the southeasterly line of Alvord Street and the southwesterly line of Wallace Avenue and on the west by the southeasterly line of Donahue Street. Containing 63.15 acres, more or less."

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #2 is \$56,384.10.

That Parcel #3A contains that area within Tide Block 733, as the same is delineated upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water", and is more particularly described as follows:

"All of Block 733, as said Block is shown on that certain map entitled 'Map of the Salt Marsh and Tide Lands Lying Under Water' adopted by the Board of Tide Land Commis-

sioners on March 19, 1869, said block also being known as City and County of San Francisco Assessors Block No. 4781. Containing 2.80 acres more or less."

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3A is \$2500.01.

That Parcel #3B contains that area within Tide Block 734 as the same is delineated upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water", and is more particularly described as follows:

"All of Block 34, as said Block is shown on that certain Map entitled 'Map of Salt Marsh and Tide Lands and Lands Lying Under Water' adopted by the Board of Tide Land Commissioners on March 19, 1869, said block also being known as City and County of San Francisco Assessors' Block No. 4798. Containing 2.80 acres more or less."

That the reasonable market value of the lands exclusive of minerals and mineral rights, contained in Parcel #3B is \$2500.01. [73]

That a copy of the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" is attached hereto, marked Exhibit "B" and made a part hereof by reference. That the said Exhibit "B" shows the line of the "Stanford" patent, hereinbefore referred to, and shows, delineated in Blue (Parcel # 1), Red (Parcel 2) and Yellow (Parcels 3A and 3B), the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays:

(1) That the Court assess the sum of \$63,069.43 and award the same to the defendant, State of California, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the Court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 25th day of July, 1942, to such extent be modified;

(4) That the Court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,

Attorney General, State of
California.

/s/ By JOHN F. HASSLER, JR.,

Deputy Attorney General,
Attorneys for Defendant,
State of California.

Receipt of copy of the within Answer is hereby admitted this 26th day of December, 1943.

/s/ M. MITCHELL BOURQUIN,
(DAR)

Special Assistant to the
Attorney General.

Attorney for Plaintiff.

[Endorsed]: Filed Dec. 21, 1943. [75]

No. 1177

Division of State Lands, State Lands Commission,
State of California, Sacramento

The undersigned, acting in this behalf for the State Lands Commission, does hereby certify, that the annexed document is a true and correct copy of a resolution unanimously passed by the State Lands Commission at a meeting held in Sacramento November 4, 1943, on file in the office of the State Lands Commission; that said copy has been compared by the undersigned with the original, and is a correct transcript therefrom.

In Witness Whereof, the undersigned has executed this certificate and affixed the seal of the State Lands Commission, this 17th day of December, A. D. 1943.

[Seal] /s/ CARLYLE F. LYNTON,
Executive Officer, State
Lands Commission. [76]

EXHIBIT "A"

RESOLUTION

Whereas, the Sovereign State of California has in many instances in the past conveyed by grant, deed or under court decree lands belonging to the Sovereign State of California and,

Whereas, the Sovereign State of California has failed in most instances to reserve to the Sovereign State of California, the mineral which might have been contained in such conveyed lands, and,

Whereas, the people of the Sovereign State of California have been deprived of revenue which might have accrued to their benefit had such minerals been reserved, and

Whereas, Section 6401 of the Public Resources Code of the State of California specifically provides for a reservation to the Sovereign State of California of all mineral deposit in lands belonging to the State of California,

Now Therefore Be It Resolved, that the State Lands Commission does hereby record itself as being opposed to any further conveyance of State Lands to the Federal Government without insisting upon reserving to the State of California, the minerals which might be contained therein, and

Be It Further Resolved, that the Executive Officer of the State Lands Commission be instructed to present to the Honorable Robert W. Kenny, Attorney General of the State of California, a copy of this resolution together with a request that the Attorney General's office from this date henceforth shall demand reservation to the Sovereign State of California of all deposits of coal, phosphate, sodium, gold, silver, oil, gas, oil shale, or other hydrocarbons and all other mineral deposits which might be contained within any State Lands which the Federal Government seeks to condemn or otherwise acquire.

November 4, 1943.

/s/ JOHN F. HASSLER,

Chairman, State Lands

Commission. [77]

In the District Court of the United States in and
For the Northern District of California, South-
ern Division

No. 22261-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 acres of land, City and County of San Fran-
cisco, State of California, MATILDA PRIOR
ANDREWS II, et al.,

Defendants.

AMENDMENT TO COMPLAINT

Now comes the United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, and, as of course, files this Amendment to Complaint, and alleges as follows:

Amends Paragraph X of said Complaint by deleting said paragraph contained therein, and inserting in its place and stead the following:

“X.

That the defendants, City and County of San Francisco and State of California, may have or claim some interest or lien in or to the following described lands:

Parcel 52

All that real property situate in the City and County of San Francisco, State of California, described as follows:

Commencing at the point of intersection of the southwesterly line of Revere Avenue and

the Southeasterly line of Coleman Street; running thence southeasterly and along said line of [78] Revere Avenue 600 feet to the northwesterly line of Boalt Street; thence at a right angle southwesterly along said line of Boalt Street 200 feet to the northeasterly line of Shafter Avenue; thence at a right angle northwesterly along said line of Shafter Avenue 600 feet to the southeasterly line of Coleman Street; thence at a right angle northeasterly along said line of Coleman Street 200 feet to the point of commencement.

Being all of Block No. 733 Tide Lands.

Parcel 60

All that real property situate in the City and County of San Francisco, State of California, described as follows:

Commencing at the point of intersection of the southwesterly line of Shafter Avenue and the southeasterly line of Coleman Street; running thence southeasterly and along said line of Shafter Avenue 600 feet to the northwesterly line of Boalt Street; thence at a right angle southwesterly along said line of Boalt Street 200 feet to the northeasterly line of Thomas Avenue; thence at a right angle northwesterly along said line of Thomas Avenue 600 feet to the southeasterly line of Coleman Street; thence at a right angle northeasterly along said line of Coleman Street 200 feet to the point of commencement.

Being all of Block No. 734 Tide Lands.”

Wherefore, plaintiff prays Judgment as prayed for in the Complaint on file herein.

/s/ MITCHELL BOURQUIN,
Special Assistant to the
Attorney General.
Attorney for Plaintiff. [79]

VERIFICATION

United States of America,
Northern District of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States and attorney for the plaintiff in the above entitled action; that he has read the foregoing Complaint in Condemnation and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on his information or belief, and as to those matters that he believes it to be true;

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign;

That the sources of affiant's information and the grounds for his belief are the official communications, records, files and documents received from

the Attorney General of the United States and from
Navy Department of the United States.

/s/ M. MITCHELL BOURQUIN,

Subscribed and sworn to before me this 11th day
of April, 1945.

[Seal] LOUIS V. VASQUEZ,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 4, 1947.

[Endorsed]: Filed April 17, 1945. [80] .

In the District Court of the United States, in and
For the Northern District of California, South-
ern Division

No. 22261 W

UNITED STATES OF AMERICA,
Plaintiff,

vs.

193 Acres of land, City and County of San Fran-
cisco, State of California, et al.,
Defendants.

AMENDED ANSWER OF DEFENDANT,
STATE OF CALIFORNIA

Comes now the defendant, State of California,
one of the defendants in the above action, and for

answer to plaintiff's complaint herein, affirms, denies and alleges as follows:

I.

Denies all the allegations contained in paragraph I of plaintiff's complaint herein.

II.

Denies the allegations contained in paragraph II of plaintiff's complaint herein, and in this connection alleges:

That it is not necessary, for the purposes mentioned in said paragraph II, to acquire the subsurface estate, consisting of the mineral and mineral rights, in and to the property condemned herein; that the acts referred to in said [81] paragraphs I and II of the complaint herein do not authorize the condemnation or taking of minerals and mineral rights in property where such taking or condemnation is not essential to the uses and purposes for which the property is condemned.

That Section 6401 of the Public Resources Code of the State of California provides that in the disposal of all tide and submerged lands, belonging to the State of California, there be reserved to the State the mineral deposits and mineral rights in lands authorized to be sold.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of minerals and mineral rights. A certified copy of said resolu-

tion is attached to the Answer of defendant, State of California as Exhibit "A" and is by this reference incorporated herein.

III.

Denies the allegations of paragraph III of plaintiff's complaint herein.

IV.

Admits as alleged in paragraph IV that the estate or interest which plaintiff seeks to condemn in the lands described in the complaint is the fee simple title thereto, but in this connection this defendant alleges that such estate or interest is not necessary for the purposes mentioned in paragraphs I and II of the complaint; that it is not necessary to condemn the minerals and mineral rights in said described lands.

V.

Respecting the allegations contained in paragraph V of plaintiff's complaint herein, defendant, State of California has no information or belief upon the subject, and, placing its denial upon said ground, denies the allegations thereof. [82]

VI.

Admits the allegations of paragraph VI of plaintiff's complaint herein.

VII.

Admits that the defendant, State of California, has and claims an interest in the property subject

to suit, as alleged in paragraph IX of plaintiff's complaint herein, and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date California was admitted into and became a member of the Union of States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent was recorded in the office of the Recorder of the City and County of San Francisco in Liber 1 of Patents, at page 44; that said patent is hereinafter, for convenience, referred to as the "Stanford" patent. That thereafter, and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California". That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the completion of such preliminary survey, the said Board

was [83] directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into lots and blocks with reservations of so much thereof for streets, docks, piers, slips, canals, drains or other uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water", which Map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent, hereinbefore referred to, granted to the said South San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to and Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as the property of said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as delineated on said Map. That the said Board of Tide Land Commissioners, by resolution duly made and recorded, reserved and dedi-

cated certain market places and produce exchanges; that among such market places were those areas delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" as Tide Blocks 733 and 734. That said Tide Blocks 733 and 734 have never been conveyed by the defendant, State of California, the Board of Tide Land Commissioners, or any officer or department acting for or in behalf [84] of either said defendant, State of California, or said Board of Tide Land Commissioners. That there were also laid out and established by said survey blocks and lots surrounded by areas delineated upon the said Map as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses necessary for public convenience and purposes of commerce; that none of the lands lying outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association and within the areas designated as Streets and Avenues upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" has ever been conveyed or dedicated by the State of California, by the State Board of Tide Land Commissioners, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise. That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said

Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged lands situated between the said Water Line Front and easterly line of Water Front Street and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff's complaint herein embraces the following lands:

(1) The lands lying Bayward of Water Line Front and the easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(2) The lands lying outside the line of the "Stanford" patent and delineated upon the "Map of [85] Salt Marsh and Tide Lands and Lands Lying Under Water" as Streets and Avenues.

(3) The lands lying within Tide Blocks 733 and 734, as the same are delineated upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water."

That the defendant, State of California, is the owner of and was, at the time of the filing of the complaint herein, entitled to the possession of such lands.

That the lands above referred to are hereinafter referred to as Parcels #1, #2, #3A and #3B.

That Parcel #1 contains that area lying Bayward of the line of the Water Line Front and

easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

“Commencing at the intersection of the United States Bulkhead Line with the southeasterly extension of the northeasterly line of Oakdale Avenue; thence southerly along said United States Bulkhead Line to its intersection with the southeasterly extension of the southwesterly line of Shafter Avenue; thence northwesterly along said southeasterly extension of the southwesterly line of Shafter Avenue to the southerly line of Water Front Street; thence along the southerly and easterly line of Water Front Street northerly to said southeasterly extension of the northeasterly line of Oakdale Avenue; thence along said southeasterly extension of the northeasterly line of Oakdale Avenue, southeasterly to the point of Commencement. Containing 1.884 acres more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #1 is \$1685.31.

That Parcel #2 contains that area shown on the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water”, outside the line of the “Stanford” patent to the South San Francisco Homestead and Railroad Association, and delineated [86]

upon said Map as Streets and Avenues, and is more particularly described as follows:

“All those certain streets and avenues lying within an area bounded on the north by the ‘Stanford’ patent line and the northeasterly line of Oakdale Avenue; on the east by the Water Line Front; on the south by the southwesterly line of Shafter Avenue, the southeasterly line of Alvord Street and the southwesterly line of Wallace Avenue and on the west by the southeasterly line of Donahue Street. Containing 64.61 acres, more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #2 is \$56,384.10.

That Parcel #3A contains that area within Tide Block 733, as the same is delineated upon the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water”, and is more particularly described as follows:

“All of Block 733, as said Block is shown on that certain map entitled ‘Map of The Salt Marsh and Tide Lands and Lands Lying Under Water’ adopted by the Board of Tide Land Commissioners on March 19, 1869, said block also being known as City and County of San Francisco Assessors Block No. 4781. Containing 2.80 acres more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel #3A is \$2500.01.

That Parcel #3B contains that area within Tide Block 734 as the same is delineated upon the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water”, and is more particularly described as follows:

“All of Block 734, as said Block is shown on that certain Map entitled ‘Map of Salt Marsh and Tide Lands and Lands Lying Under Water’ adopted by the Board of Tide Land Commissioners on March 19, 1869, said block also being known as City and County of San Francisco Assessors’ Block No. 4798. Containing 2.80 acres more or less.”

That the reasonable market value of the lands exclusive of minerals and mineral rights, contained in Parcel #3B [87] is \$2500.01.

That a copy of the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water” is attached as Exhibit “B” to the Answer of defendant, State of California, and is by this reference incorporated herein. That the said Exhibit “B” shows the line of the “Stanford” patent, hereinbefore referred to, and shows, delineated in Blue (Parcel #1) Red (Parcel 2) and Yellow (Parcels 3A and 3B), the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays:

(1) That the Court assess the sum of \$63,069.43 and award the same to the defendant, State of Cali-

fornia, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the Court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 25th day of July, 1942, to such extent be modified;

(4) That the Court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,

Attorney General of the State
of California.

/s/ HAROLD B. HAAS,

Deputy Attorney General

/s/ MIRIAM E. WOLFF,

Deputy Attorney General,
Attorneys for defendant,
State of California.

[Affidavit of Service by Mail.]

[Endorsed]: Filed: Jun. 21, 1946. [88]

[Title of District Court and Cause.]

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The above entitled action was consolidated for trial with United States vs. 193 acres of land in

the City and County of San Francisco, State of California, Civil 22261-R and United States vs. Certain land in the City and County of San Francisco, State of California, Civil No. 22416-R, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche presiding, a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr. and J. Harold Weise, Special Attorneys appearing for the plaintiff, United States of America, and Robert W. Kenny, Attorney General of the State of California, Harold B. Haas and Miriam E. Wolff, Deputies Attorney General, appearing for the State of [89] California, and the evidence having been duly taken and heard and the cause submitted for decision, the Court makes and files its Findings of Fact and Conclusions of Law as follows:

I.

That the Complaint in the above entitled action was filed on July 25, 1942, and that the plaintiff in the above entitled action is the United States of America and brings said action pursuant to and under the provisions contained in the act of Congress approved January 29, 1942 (Public Law 420, 77th Congress, 56 Stat. Chap. 25) and the act of Congress approved February 7, 1942 (Public Law 441, 77th Congress, 56 Stat., Chap. 46) appropriated funds therefor.

II.

That the lands hereinafter described are taken and condemned under the authority of the above mentioned acts of Congress for the uses and purposes authorized by said acts and are taken and condemned for use in connection with the establishment of the Naval Drydocks, Hunters Point, San Francisco, California, and are suitable and necessary for said purpose; that said use of said lands constitutes a public use and that the acquisition of said lands by plaintiff is of the greatest public benefit and the *leasr* private injury.

III.

That service has been properly made upon all persons interested in said lands hereinafter described:

IV.

That prior to September 9, 1850, the lands subject of this trial were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date, California was admitted into and became a member of the [90] union of states, upon an equal footing with the original states in all respects, and thereupon and by that fact acquired title to all tide and submerged lands involved in this trial; that the Act of 1868 (Ststs. of Cal. 1867-68, Page 716) created a Board of Tide Land Commissioners, and authorized and directed the said Board to take possession of all the salt marsh and tide

lands and lands lying under water, situated in the City and County of San Francisco, and to cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide; that after the completion of such preliminary survey, the Board was directed to establish the Water Line Front of San Francisco, and cause all of the property belonging to the State lying south of Second Street, within the said County to be surveyed into lots and blocks.

That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed and to cause the lots as so established to be sold at public auction; that pursuant to said Act, the Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869.

That none of the land claimed by the State of California in this action had been reclaimed at the time said action was commenced and that all of the land so claimed was tide or submerged lands.

V.

That pursuant to said statute, said Tide Land Commissioners sold, at public auction, all the right, title, and interest of defendant, State of California, in and to the property in said lots exhibited on said map and said sales were by lots in accordance with said survey and map. [91]

VI.

That Parcel 2, hereinafter described, embraces and is a portion of certain streets and alleys exhibited and delineated upon said map, "Map of Salt Marsh and Tide Lands and Lands Lying Under Water."

VII.

That the interest or title that defendant, State of California, retained in said Parcel 2 was retained only for the purpose of providing ingress and egress to said lots sold and that the interest or title of defendant, State of California, in and to said parcel at the date of the taking herein was subject to easements for access to and from said lots exhibited and delineated upon said survey and map.

VIII.

That said Parcel 2 is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

"All those certain streets and avenues lying within an area bounded on the north by the "Stanford" patent line and the northeasterly line of Oakdale Avenue; on the east by the Water Line Front; on the south by the southwesterly line of Shafter Avenue, the southeasterly line of Alvord Street and the southwesterly line of Wallace Avenue and on the west by the southeasterly line of Donahue Street. Containing 64.61 acres, more or less."

That just compensation for said parcel including any and all damages to the larger tract of which said Parcel 2 is a part is the sum of One and No/100 Dollar (\$1.00).

IX.

Except as hereinbefore more particularly set forth all of the allegations, the Plaintiff's Complaint are true.

X.

Except as hereinbefore more particularly set forth all the allegations of the answer amended answer of [92] defendant, State of California, are not true.

Conclusions of Law

I.

That the Court has jurisdiction of the parties and the subject matter of this action.

II.

That the use for which the property is taken is a public use of the United States and that the United States is authorized by law to acquire the same by condemnation.

III.

That the damage suffered by the State of California for the taking of Parcel 2 is the sum of One and No/100 Dollar (\$1.00).

IV.

That a Judgment of Condemnation in the form provided by law shall be made and entered herein.

V.

Let Judgment be entered accordingly.

Done in Open Court, this 22nd day of January, 1947.

MICHAEL J. ROCHE,
Judge.

Receipt of the foregoing Findings of Fact and Conclusions of Law is hereby acknowledged this 12th day of December, 1946.

ROBERT W. KENNY,
Attorney General of the
State of California.

By HAROLD B. HAAS,
Deputy Attorney General,
Attorney for Defendant
State of California.

[Endorsed]: Filed Jan. 22, 1947. [93]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 2261-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 ACRES OF LAND, City and County of San
Francisco, State of California, MATILDA
PRIOR ANDREWS II, et al.,

Defendants.

PRELIMINARY JUDGMENT AS TO
PARCEL 2

The above entitled action was consolidated for trial with United States vs. 193 Acres of land in the City and County of San Francisco, State of California, Civil 2261-R and United States vs. Certain land in the City and County of San Francisco, State of California, Civil No. 22416-R, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche presiding, a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr. and J. Harold Weise, Special Attorneys appearing for the plaintiff, United States of America, and Robert W.

Kenny, Attorney General of the State of California, Harold B. Haas and Miriam E. Wolff, Deputies Attorney General, appearing for the State of California, and evidence, both oral and documentary, having been introduced by the parties hereto and the case having [94] been fully tried and presented to the Court, and briefs having been submitted by the respective parties and the Cause having been submitted for decision on the 19th day of October, 1946, and the Court having heretofore filed its written Findings of Fact and Conclusions of Law;

Wherefore, by reason of the law and the findings herein.

It Is Hereby Ordered, Adjudged and Decreed:

I.

That title to Parcel 2, the subject of the above entitled action, will vest in the United States of America in fee simple absolute upon the deposit in the Registry of this Court of the compensation therefore herein awarded.

II.

That said Parcel 2 is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the north by the "Stanford" patent line and the northeasterly line of Oakdale Avenue; on the east by the

Water Line Front; on the south by the southwesterly line of Shafter Avenue, the southeasterly line of Alvord Street and the southwesterly line of Wallace Avenue and on the west by the southeasterly line of Donahue Street. Containing 64.61 acres, more or less.

III.

That defendant State of California is awarded the sum of One Dollar (\$1.00) for said Parcel 2 together with interest from the date of the entry of this Judgment until paid.

Done in Open Court, this 22nd day of January, 1947.

LOUIS E. GOODMAN,
Judge.

Approved as to form:

FRED N. HOWSER,
Attorney General of the
State of California.

By MIRIAM E. WOLFF,
Deputy Attorney General,
Attorney for the State of
California.

[Endorsed]: Filed and Entered Jan. 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Honorable Michael J. Roche, Judge of the District Court of the United States, Southern Division, Northern District of California and to M. Mitchell Bourquin, Esq., Special Assistant to the Attorney General, and John J. Healy, Jr., and J. Harold Weise, Esqs., Attorneys for Plaintiff:

You and each of you will please take notice that the defendant, State of California, hereby appeals to the United States Circuit Court of Appeals, Ninth Judicial District, from that portion of the preliminary judgment as to parcel 2 therein awarding defendant, State of California, the sum of One Dollar for its interest therein and denying defendant, State of California, any further or additional compensation for the taking of said property.

Dated: April 21, 1947.

/s/ FRED N. HOWSER,
Attorney General.

/s/ HAROLD B. HAAS,
Deputy Attorney General.

/s/ MIRIAM E. WOLFF,
Deputy Attorney General.

[Affidavit of Service by Mail.]

[Endorsed]: Filed: Apr. 21, 1947 [96]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That Pacific Indemnity Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, and duly licensed to transact a surety business in the State of California, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty and No/100 Dollars (\$250.00), to be paid unto said United States of America, for which payment well and truly to be made Pacific Indemnity Company binds itself, its successors and assigns firmly by these presents.

Signed, Sealed and Dated This 10th Day of March, 1947.

The condition of the above obligation is such that [97] whereas State of California, defendant in the above entitled cause, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of the above entitled court entered in said cause on the 22nd day of January, 1947;

Now, Therefore the condition of the above obligation is such that is the said appellant, State of California, shall pay all costs if the said appeal is dismissed or the said judgment affirmed, or such costs as the appellate court may award if the said judgment is modified, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

It Is Further Stipulated as a part of the foregoing bond that in case of a breach of any condition thereof, the above named District Court may, upon notice to said surety of not less than ten days, proceed summarily in the above entitled action to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and award execution therefor.

PACIFIC INDEMNITY
COMPANY,

[Seal] By R. L. TRAVISS,
Attorney in Fact.

State of California,
City and County of
San Francisco—ss:

On this 10th day of March in the year one thousand nine hundred and forty-seven before me, Emily K. McCorry, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared R. L. Traviss, known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said R. L. Traviss acknowledged to me that he subscribed the name of Pacific Indemnity Company thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] EMILY K. McCORRY,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires December 21, 1950.

[Endorsed]: Filed: Apr. 21, 1947.

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION OF EXHIBITS
TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT

It appearing to the court that the exhibits in the above entitled matter consist of maps, diagrams and original papers, not capable of reproduction in the printed record,

Now, Therefore, It Is Hereby Ordered that copies of the original papers and exhibits which were introduced in evidence during the trial of said cause need not be copied in the Record of Appeal in said cause to be filed in connection with the appeal of said defendant and appellant, and that all original papers and exhibits introduced in evidence at the trial of said cause in the above entitled court by plaintiff, United States of America, and defendant, State of California, with respect to Parcel 2, together with all the original papers and exhibits

introduced in evidence at the trial of said action with respect to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of action 22416-R, which actions were consolidated with the above entitled action for the purposes of trial, may be transferred and transmitted in their original form to the court to which said appeal is taken, namely, the United States Circuit Court of Appeals for the Ninth Circuit; and

It Is Further Ordered that all such original papers and exhibits shall be included in and be a part of the Record on Appeal to the same effect as though copied therein.

It Is Further Ordered that the said exhibits and testimony introduced in evidence at the trial of Parcel 2 of the above entitled action were also introduced in evidence with reference to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of action 22416-R, which actions were consolidated with the above entitled action for the purposes of trial, and that the original papers and exhibits, all of which are the subject of this Order, may be considered by the court with like effect with reference to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of action 22416-R.

Dated: July 29, 1947.

GEORGE B. HARRIS,

Judge of the U. S. District
Court.

[Endorsed]: July 29, 1947. [102]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

Comes Now Appellant, State of California, one of the defendants above named, and states that its appeal is from that portion of the judgment decreeing that the State of California is entitled to receive the sum of \$1.00 and no more for the taking of parcel 2, which was given, made and entered in the above-entitled cause on the 22nd day of January, 1947, and that said appellant will rely on its appeal herein on the following points.

I.

That the above-named United States District Court erred in finding that the interest or title that defendant, State of California, retained in said parcel 2 was retained [103] only for the purpose of providing ingress and egress to said lots sold.

II.

That the said Court erred in finding that the interest or title that defendant, State of California, retained in said parcel 2 at the date of the taking herein was subject to easements for access to and from said lots delineated upon said survey map.

III.

That the said Court erred in finding that just compensation for the taking of said parcel 2 is the sum of One and no/100 (\$1.00) Dollars.

IV.

That the said Court erred in not finding that said property was never laid out upon the grounds as streets.

V.

That the said Court erred in not finding and in not concluding that the said property was never opened nor declared open as streets.

VI.

That the said Court erred in not finding and in not concluding that the said property was never dedicated as streets.

VII.

That the said Court erred in not finding and in not concluding that the said property was not subjected to any easement as streets.

VIII.

That the said Court erred in rendering its decision and making and entering its judgment herein in that the evidence was and is insufficient to justify the judgment rendered by said court. [104]

IX.

That the said Court erred in rendering its decision and making and entering its judgment herein against the defendant, State of California, in that said judgment is contrary to the law and the facts.

X.

That the said Court erred in not making its judgment herein in favor of defendant, State of California, and against plaintiff United States of America in the sum of \$56,384.10.

Dated: June 15, 1947.

/s/ FRED N. HOWSER,

Attorney General of the
State of California.

/s/ HAROLD B. HAAS,

Deputy Attorney General.

/s/ MIRIAM E. WOLFF,

Deputy Attorney General,
Attorneys for Defendant,
State of California.

[Endorsed]: Filed Sept. 4, 1947. [105]

In the District Court of the United States in and
for the Northern District of California, Southern
Division

No. 22416-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, WILLIAM HENRY ASH, et al.,
Defendants.

COMPLAINT IN CONDEMNATION

Comes now the Plaintiff, United States of America, by M. Mitchell Bourquin, Special Assistant to

the Attorney General, at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Acting Secretary of the Navy of the United States, and for cause of action against the above-named defendants, alleges as follows:

I.

That this proceeding is instituted and the lands hereinafter described are taken and condemned pursuant to and under the provisions and authority of and for the purposes and uses authorized by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), and the Act of Congress approved February 7, 1942 (Public Law 441, 77th Congress).

II.

That the estate or interest which plaintiff seeks to take and condemn is the fee simple title to the lands hereinafter described, subject to existing public utility easements.

III.

That the lands hereinafter described have been selected by the Acting Secretary of the Navy of the United States for use in connection with the extension of the Naval Dry Docks, Hunters Point, San Francisco, California, and are sought to be taken and condemned for said purpose and use and are suitable and necessary therefor. That said use of said lands constitutes a public use and said lands are required for immediate use in order to carry out said purpose.

IV.

That the acquisition of said lands by plaintiff will be of the greatest public benefit and the least private injury; that no part of said lands has heretofore been appropriated for [109] public use by plaintiff or the State of California, or any political subdivision thereof.

V.

That there are sufficient funds now available with which plaintiff can and is authorized to pay just compensation for the lands sought to be taken and condemned herein in whatever sum may be ultimately awarded in this proceeding for the taking of said lands and any damages resulting therefrom.

VI.

That plaintiff is informed and believes and therefore alleges that the lands taken by this proceeding are not a part of any larger tract belonging to the apparent or purported owners of said land above described.

VII.

That the defendants First Doe to Thirtieth Doe, inclusive, and First Doe Corporation to Twentieth Doe Corporation, inclusive, are sued and designated herein by fictitious names for the reason that their true names are unknown to plaintiff, but the plaintiff will, upon ascertaining their true names, substitute the same for such fictitious names by appropriate amendment, and prays such leave of the

Court; that said defendants, and each of them, may have or claim to have an interest in some piece or parcel of the lands sought to be taken and condemned in this action, but that the nature, character or extent of such interest is unknown to plaintiff.

VIII.

That each of the defendants above named has or may have or claim some interest in the property hereinafter described, and are therefore joined as defendants.

IX.

That the land to be taken and condemned in this proceeding [110] is situate in the City and County of San Francisco, State of California, and is more particularly described as follows: [111]

Beginning at the point of intersection of the U. S. Bulkhead Line and the southeasterly line of Coleman Street; running thence southwesterly along said southeasterly line of Coleman Street to the intersection of said southeasterly line of Coleman Street and the southwesterly line of McKinnon Avenue; running thence northwesterly along the said southwesterly line of McKinnon Avenue to the intersection of said southwesterly line of McKinnon Avenue and the southeasterly line of Donahue Street; thence northeasterly along said southeasterly line of Donahue Street to the intersection of said southeasterly line of Donahue Street, with the

northeasterly line of Jerrold Avenue; thence southeasterly and along said line of Jerrold Avenue 75 feet; thence at a right angle northeasterly 100 feet; thence at a right angle northwesterly 75 feet to the southeasterly line of Donahue Street; running thence northeasterly along said southeasterly line of Donahue Street to the point of intersection of said southeasterly line of Donahue Street and the U. S. Bulkhead Line; running thence southeasterly along said U. S. Bulkhead Line to the point of commencement. [112]

X.

That a state of war now exists between the Plaintiff and certain foreign governments, and pursuant to the provisions of the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), the Plaintiff, upon the filing of this Complaint, becomes entitled to the right to take immediate possession of the above-described lands.

That the Acting Secretary of the Navy of the United States has determined that it is necessary that an order be obtained authorizing the United States of America to take immediate possession of said lands to the extent of the interest above described, and the above-mentioned Special Assistant to the Attorney General has been directed by the Attorney General of the United States to take proper proceedings herein to secure such orders from this Honorable Court.

Wherefore, Plaintiff prays:

1. For an order authorizing the United States to take immediate possession of the above-described lands.

2. For judgment:

(a) Decreeing that said lands above described, to the extent of the title and interest which Plaintiff seeks to acquire by this action, are condemned for necessary public uses of the Plaintiff as authorized by law; that all of said lands are necessary and suitable thereto;

(b) Determining the value of the lands subject of this action and each separate interest therein, and directing the payment for each separate interest to the persons entitled thereto.

3. For such other and further relief as the Court shall deem meet and proper in the premises.

/s/ M. MITCHELL BOURQUIN,

Special Assistant to the
Attorney General.

Attorney for Plaintiff. [114]

VERIFICATION

United States of America,
Northern District of California,
City and County of San Francisco—ss.

M. Mitchell Bourquin, being first duly sworn, deposes and says:

That he is a Special Assistant to the Attorney General of the United States and attorney for the

plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

That the reason this verification is made by affiant and not by the plaintiff is that the plaintiff is a corporation sovereign.

That the sources of affiant's information and the grounds for his belief are the official communications, records, files and documents received from the Attorney General of the United States and from the Acting Secretary of the Navy of the United States.

/s/ M. MITCHELL BOURQUIN,

Subscribed and sworn to before me this 24th day of December, 1942.

[Seal] /s/ LOUIS O. VASQUEZ,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission expires December 4, 1943.

[Endorsed]: Filed Dec. 24, 1942. [115]

[Title of District Court and Cause.]

ORDER FOR IMMEDIATE POSSESSION

It appearing from the Complaint on file herein that application has been made by plaintiff to be granted immediate possession of the lands subject of this action, and good cause appearing therefor,

It Is Hereby Ordered that the United States of America be, and it is hereby granted leave to take immediate possession of said land and property, and to use said land and property to the extent prayed for, and for the purposes alleged in said Complaint, and to proceed thereon with the authorized public works of the United States.

It Is Further Ordered that the Defendants and all other persons in possession of said property are hereby directed to deliver immediate possession thereof to the United States and its agents, and the United States Marshal is directed to place [116] and maintain plaintiff in possession of said property.

The Court reserves the right to make such other and further orders and decrees as may be necessary in the premises.

And It Further Appearing that Plaintiff has made adequate provision for the payment of just compensation for the taking of said land and property, it shall not be necessary for the plaintiff to deposit any money or other security for the purpose of securing payment to the parties entitled thereto.

The land and property subject of this Order is situate in the City and County of San Francisco, State of California, and is described as follows:

Beginning at the point of intersection of the U. S. Bulkhead Line and the southeasterly line of Coleman Street; running thence southwesterly along said southeasterly line of Coleman Street to the intersection of said southeasterly

line of Coleman Street and the southwesterly line of McKinnon Avenue; running thence northwesterly along the said southwesterly line of McKinnon Avenue to the intersection of said southwesterly line of McKinnon Avenue and the southeasterly line of Donahue Street; thence northeasterly along said southeasterly line of Donahue Street to the intersection of said southeasterly line of Donahue Street, with the northeasterly line of Jerrold Avenue; thence southeasterly and along said line of Jerrold Avenue 75 feet; thence at a right angle northeasterly 100 feet; thence at a right angle northwesterly 75 feet to the southeasterly line of Donahue Street; running thence northeasterly along said southeasterly line of Donahue Street to the point of intersection of said southeasterly line of Donahue Street and the U. S. Bulkhead Line; running thence southeasterly along said U. S. Bulkhead Line to the point of commencement.

Done in open Court this 24th day of December, 1942.

/s/ A. F. ST. SURE,
Judge.

[Endorsed]: Filed Dec. 24, 1942. [118]

In the District Court of the United States in and
for the Northern District of California, South-
ern Division.

No. 22416-R

UNITED STATES OF AMERICA

Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, et al.,

Defendants.

ANSWER OF DEFENDANT, STATE OF
CALIFORNIA

Comes Now the defendant, State of California,
one of the defendants in the above action, and for
answer to plaintiff's complaint herein, affirms, de-
nies and alleges as follows:

I.

Denies the allegations contained in Paragraph I
of plaintiff's complaint herein.

II.

Admits as alleged in paragraph II of plaintiff's
complaint herein that the estate or interest which
plaintiff seeks to condemn in the lands described in
the complaint is the fee simple title thereto, subject
to existing public utility easements, and in this con-
nection this defendant alleges that such an estate or

interest is not necessary for the purposes [119] mentioned in paragraph III of the complaint; that it is not necessary to condemn the minerals and mineral rights in said described lands.

III.

Denies the allegations contained in Paragraph III of plaintiff's complaint herein, and in this connection alleges: That it is not necessary for the purposes mentioned in said paragraph III to acquire the sub-surface estate consisting of the mineral and mineral rights in and to the property condemned herein; that the acts referred to in said paragraph I of the complaint herein do not authorize the condemnation or taking of minerals and mineral rights in property where such taking or condemnation is not essential to the uses and purposes for which the property is condemned.

That Section 6401 of the Public Resources Code of the State of California provides that in the disposal of all tide and submerged lands belonging to the State of California, there be reserved to the State the mineral deposits and mineral rights in lands authorized to be sold.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of minerals and mineral rights. A certified copy of said resolution is attached hereto and made a part hereof and for reference is marked Exhibit "A".

IV.

Denies the allegations of paragraph IV of plaintiff's complaint herein.

V.

Respecting the allegations in Paragraph V of plaintiff's complaint herein, defendant, State of California, has no information or belief upon the subject and placing its denial upon said ground, denies the allegations therein contained. [120]

VI.

Admits that the defendant, State of California, has and claims an interest in the property subject to suit as alleged in paragraph VIII of plaintiff's complaint herein and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by waters of the Bay of San Francisco; that on said date California was admitted into and became a member of the United States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent was recorded in the office of The Recorder of the City and County of San Francisco in

Liber 1 of Patents, at page 44; that said patent is hereinafter for convenience referred to as the "Stanford" Patent; that thereafter and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California." That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the completion of such preliminary survey, the said Board was directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into lots and blocks with reservations of so much thereof for streets, docks, piers, slips, canals, drains or other [121] uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water", which Map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent,

hereinbefore referred to, granted to the said South San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to and Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying under Water", as the property of the said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as designated on said Map. That there were also laid out and established, by said survey, blocks and lots surrounded by areas delineated upon the said Map as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses necessary for public convenience and purpose of commerce. That the northwest corner of Tide Block 72, as delineated on the "Map of Salt Marsh and Tide Lands and Lands lying under Water" to the extent that the lands therein lie Bayward of the "Stanford" Patent Line, has never been conveyed to the defendant State of California or by the said State Board of Tide Land Commissioners. That none of the [122] lands lying outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association and within the areas designated as Streets and Avenues upon the "Map of Salt Marsh and

Tide Lands and Lands Lying Under Water” has ever been conveyed or dedicated by the State of California, by the State Board of Tide Land Commissioners, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise. That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged lands situated between the said Water Line Front and easterly line of Water Front Street and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff’s complaint herein embraces the following lands:

(1) The Lands Lying Bayward of Water Line Front and the easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(2) The Lands lying outside the line of the “Stanford” patent and delineated upon the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water” as Streets and Avenues.

(3) That portion of the Northwest corner of Tide Block 72, as delineated on the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water” which lies Bayward of the “Stanford” Patent Line.

That the lands above referred to are hereinafter referred to as Parcels No. 1, No. 2 and No. 3. [123]

That the said Parcel No. 1 comprises the area lying Bayward of the line of the Water Line Front and easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

“Commencing at the intersection of the northeasterly extension of the southeasterly line of Donahue Street and the United States Bulkhead Line; thence along said United States Bulkhead Line southeasterly to the northeasterly extension of the southeasterly line of Coleman Street; thence southwesterly along said northeasterly extension of the southeasterly line of Coleman Street to the northeasterly line of Water Front Street; thence **northwesterly** along said line of Water Front Street to said northeasterly extension of the southeasterly line of Donahue Street; thence northeasterly along said northeasterly extension to the point of Commencement. Containing 0.80 of an acre more or less.

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 1 is \$714.29.

That Parcel No. 2 contains that area shown on the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water”, outside the line of the “Stanford” patent to the South San Francisco Home-

stead and Railroad Association, and delineated upon said Map as Streets and Avenues, and is more particularly described as follows:

“All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Donahue Street, on the north and east by the Water Line Front and the southeasterly line of Coleman Street and on the south by the “Stanford” patent line. Containing 9.24 acres more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 2 is \$8250.03.

That Parcel No. 3 contains the northwest corner, outside the “Stanford” Patent Line, of that area delineated upon the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water” as Tide Block 72, and is more particularly described as follows: [124]

“Commencing at the intersection of the southeasterly line of Donahue Street with the southwesterly line of Davidson Avenue; thence southeasterly along said southwesterly line of Davidson Avenue to the “Stanford” patent line; thence northwesterly along last said line to said southeasterly line of Donahue Street; thence northeasterly along said line of Donahue Street to the point of Commencement. Containing 0.07 of an acre more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 3 is \$62.50.

That a copy of the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" is attached hereto, marked Exhibit "B", and made a part hereof by reference. That the said Exhibit "B" shows the line of the "Stanford" patent, hereinbefore referred to, and shows, delineated in blue (Parcel 1), red (Parcel 2) and yellow (Parcel 3) the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays:

(1) That the Court assess the sum of \$9,026.82 and award the same to the defendant, State of California, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the Court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 24th day of December, 1942, to such extent be modified. [125]

(4) That the Court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,

Attorney General, State of
California,

/s/ By JOHN F. HASSLER, JR.,

Deputy Attorney General.

Attorneys for Defendant,
State of California.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Dec. 21, 1943, [126]

No. 1177

Division of State Lands, State Lands Commission,
State of California, Sacramento

The undersigned, acting in this behalf for the State Lands Commission, does hereby certify, that the annexed document is a true and correct copy of a resolution unanimously passed by the State Lands Commission at a meeting held in Sacramento, November 4, 1943, on file in the office of the State Lands Commission; that said copy has been compared by the undersigned with the original, and is a correct transcript therefrom.

In Witness whereof, the undersigned has executed this certificate and affixed the seal of the State Lands Commission, this 17th day of December, A.D., 1943.

[Seal] /s/ CARLYLE F. LYNTON,
Executive Officer State Lands
Commission. [127]

EXHIBIT "A"

RESOLUTION

Whereas, the Sovereign State of California has in many instances in the past conveyed by grant, deed or under court decree lands belonging to the Sovereign State of California and,

Whereas, the Sovereign State of California has failed in most instances to reserve to the Sovereign State of California, the mineral which might have been contained in such conveyed lands, and,

Whereas, the people of the Sovereign State of California have been deprived of revenue which might have accrued to their benefit had such minerals been reserved, and

Whereas, Section 6401 of the Public Resources Code of the State of California specifically provides for a reservation to the Sovereign State of California of all mineral deposit in lands belonging to the State of California,

Now, Therefore Be It Resolved, that the State Lands Commission does hereby record itself as being opposed to any further conveyance of State Lands to the Federal Government without insisting upon reserving to the State of California, the minerals which might be contained therein, and

Be It Further Resolved, that the Executive Officer of the State Lands Commission be instructed to present to the Honorable Robert W. Kenny, Attorney General of the State of California, a copy of this resolution together with a request that the Attorney General's office from this date henceforth shall demand reservation to the Sovereign State of California of all deposits of coal, phosphate, sodium, gold, silver, oil, gas, oil shale, or other hydrocarbons and all other mineral deposits which might be contained within any State Lands which the Federal Government seeks to condemn or otherwise acquire.

November 4, 1943.

/s/ JOHN F. HASSLER,
Chairman, State Lands
Commission. [128]

In the District Court of the United States in and for
the Northern District of California, Southern
Division

No. 22416 R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND
COUNTY OF SAN FRANCISCO, STATE
OF CALIFORNIA, et al.,

Defendants.

AMENDED ANSWER OF DEFENDANT,
STATE OF CALIFORNIA

Comes now the defendant, State of California,
one of the defendants in the above action, and for
answer to plaintiff's complaint herein, affirms, de-
nies and alleges as follows:

I.

Denies the allegations contained in Paragraph I
of plaintiff's complaint herein.

II.

Admits as alleged in Paragraph II of plaintiff's
complaint herein that the estate or interest which
plaintiff seeks to condemn in the lands described
in the complaint is the fee simple title thereto, sub-
ject to existing public utility easements, and in this
connection this defendant alleges that such an estate
or interest is not necessary for the purposes men-

tioned in Paragraph III of the complaint; that it is not [129] necessary to condemn the minerals and mineral rights in said described lands.

III.

Denies the allegations contained in Paragraph III of plaintiff's complaint herein, and in this connection alleges: That it is not necessary for the purposes mentioned in said Paragraph III to acquire the sub-surface estate consisting of the mineral and mineral rights in and to the property condemned herein; that the acts referred to in said Paragraph I of the complaint herein do not authorize the condemnation or taking of minerals and mineral rights in property where such taking or condemnation is not essential to the uses and purposes for which the property is condemned.

That Section 6401 of the Public Resources Code of the State of California provides that in the disposal of all tide and submerged lands belonging to the State of California, there be reserved to the State the mineral deposits and mineral rights in lands authorized to be sold.

That on November 4, 1943, the State Lands Commission adopted a resolution requiring that reservation to the State be made of all deposits of minerals and mineral rights. A certified copy of said resolution is attached to the Answer of defendant, State of California as Exhibit "A" and is by this reference incorporated herein.

IV.

Denies the allegations of Paragraph IV of plaintiff's complaint herein.

V.

Respecting the allegations in Paragraph V of plaintiff's complaint herein, defendant, State of California, has no information or belief upon the subject and placing its denial upon said ground, denies the allegations therein contained. [130]

VI.

Admits that the defendant, State of California, has and claims an interest in the property subject to suit as alleged in paragraph VIII of plaintiff's complaint herein and in this connection alleges:

That prior to September 9, 1850, a portion of the lands subject to this action were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date California was admitted into and became a member of the Union of States upon an equal footing with the original States, in all respects, and thereupon and by that fact acquired title to all such tide and submerged lands. That thereafter, and on June 20, 1863, the defendant, State of California, acting through its Governor, Leland Stanford, conveyed by patent to the South San Francisco Homestead and Railroad Association certain of the said tide and submerged lands; that said patent was recorded in the office of The Recorder of the City and County of San Francisco in Liber 1 of Patents, at page 44; that said

patent is hereinafter for convenience referred to as the "Stanford" Patent; that thereafter and on March 30, 1868, the Legislature of the State of California enacted "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California." That said Act created a Board of Tide Land Commissioners and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide. That after the completion of such preliminary survey, the said Board was directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying South of Second Street within the City and County to be surveyed into [131] lots and blocks with reservations of so much thereof for streets, docks, piers, slips, canals, drains or other uses necessary for the public convenience and purposes of commerce as the said Board deemed required. That the said Act further authorized and directed the said Board to prepare maps of the area as re-surveyed, and to cause the lots as so established to be sold at public auction. That pursuant to said Act the said Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which Map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869. That the said "Stanford" patent, hereinbefore referred to, granted to the said South

San Francisco Homestead and Railroad Association certain swamp and overflow, tide and submerged lands in addition to and Bayward of the lands delineated upon the said "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," as the property of the said South San Francisco Homestead and Railroad Association. That the said survey established, within 24 feet of water at the lowest stage of the tide, the Water Line Front; which said Water Line Front coincided with the easterly line of Water Front Street, as delineated on said Map. That there were also laid out and established, by said survey, blocks and lots surrounded by areas delineated upon the said Map as Streets and Avenues. That said Map contains a certification that said Map correctly exhibits the Water Line Front of the City and County of San Francisco, together with reservations for streets, docks, piers, slips, canals, basins and other uses necessary for public convenience and purposes of commerce. That the northwest corner of Tide Block 72, as delineated on the "Map of Salt Marsh and Tide Lands and Lands lying under Water" to the extent that the lands therein lie Bayward of the "Stanford" Patent Line, has never been conveyed by the defendant State of California or by the [132] said State Board of Tide Land Commissioners. That none of the lands lying outside the line of the "Stanford" patent to the South San Francisco Homestead and Railroad Association and within the areas designated as Streets and Avenues upon the "Map of Salt Marsh and Tide Lands and Lands

Lying Under Water” has ever been conveyed or dedicated by the State of California, by the State Board of Tide Land Commissioners, or by any municipal corporation, pursuant to authority of the defendant, State of California, or otherwise. That about the year 1890 the Harbor Line Board of the United States Engineers established the present United States Bulkhead Line; that said Bulkhead Line lies Bayward of said Water Line Front and easterly line of Water Front Street. That none of the said tide and submerged lands situated between said Water Line Front and easterly line of Water Front Street and the said United States Bulkhead Line has ever been conveyed by the State of California.

That the description in plaintiff’s complaint herein embraces the following lands:

(1) The lands lying Bayward of Water Line Front and the easterly line of Water Front Street and situated between such line and the United States Bulkhead Line;

(2) The lands lying outside the line of the “Stanford” patent and delineated upon the “Map of Salt Marsh and Tide Lands and Lands Lying Under Water” as Streets and Avenues.

(3) That portion of the Northwest corner of Tide Block 72, as delineated on the “Map of Salt Marsh and Tide Lands and Lands Lying under Water” which lies Bayward of the “Stanford” Patent Line.

That the lands above referred to are hereinafter referred to as Parcels Nos. 1, 2 and 3. [133]

That the said Parcel No. 1 comprises the area lying Bayward of the line of the Water Line Front and easterly line of Water Front Street and situate between such Water Line Front and the United States Bulkhead Line, and is more particularly described as follows:

“Commencing at the intersection of the northeasterly extension of the southeasterly line of Donahue Street and the United States Bulkhead Line; thence along said United States Bulkhead Line southeasterly to the northeasterly extension of the southeasterly line of Coleman Street; thence southwesterly along said northeasterly extension of the southeasterly line of Coleman Street to the northeasterly line of Water Front Street; thence northwesterly along said line of Water Front Street to said northeasterly extension of the southeasterly line of Donahue Street; thence northeasterly along said northeasterly extension to the point of Commencement. Containing 0.79 of an acre more or less.”

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 1 is \$705.36.

That Parcel No. 2 contains that area shown on the “Map of Salt Marsh and Tide Lands Lying Under Water,” outside the line of the “Stanford” patent to the South San Francisco Homestead and Railroad Association, and delineated upon said Map as Streets and Avenues, and is more particularly described as follows:

“All those certain streets and avenues lying

within an area bounded on the west by the southeasterly line of Donahue Street, on the north and east by the Water Line Front and the southeasterly line of Coleman Street and on the south by the "Stanford" patent line. Containing 8.73 acres more or less."

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 2 is \$8250.03.

That Parcel No. 3 contains the northwest corner, outside the "Stanford" Patent Line, of that area delineated upon the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" [134] as Tide Block 72, and is more particularly described as follows:

"Commencing at the intersection of the southeasterly line of Donahue Street with the southwesterly line of Davidson Avenue; thence southeasterly along said southwesterly line of Davidson Avenue to the "Stanford" patent line; thence northwesterly along last said line to said southeasterly line of Donahue Street; thence northeasterly along said line of Donahue Street to the point of Commencement. Containing 0.07 of an acre more or less."

That the reasonable market value of the lands, exclusive of minerals and mineral rights, contained in Parcel No. 3 is \$62.50.

That a copy of the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water" is attached to the Answer of defendant, State of California, as Exhibit "B" and is by this reference incorpo-

rated herein. That the said Exhibit "B" shows the line of the "Stanford" patent, hereinbefore referred to, and shows, delineated in blue (Parcel 1), red (Parcel 2) and yellow (Parcel 3) the areas owned by the defendant, State of California.

Wherefore, said defendant, State of California, prays:

(1) That the Court assess the sum of \$9,017.89 and award the same to the defendant, State of California, as compensation for the taking of its interest, exclusive of minerals and mineral rights in the said premises, in the land subject to this suit;

(2) That the Court adjudge the defendant, State of California, the owner of the sub-surface estate in the minerals and mineral rights;

(3) That the Order granting immediate possession and use of the lands herein, heretofore made on the 24th day of December, 1942, to such extent be modified; [135]

(4) That the Court grant such other and further relief as may be meet and proper in the premises.

ROBERT W. KENNY,
Attorney General of the State
of California.

/s/ HAROLD B. HAAS,
Deputy Attorney General.

/s/ MIRIAM E. WOLFF,
Deputy Attorney General.
Attorneys for Defendant
State of California.

[Affidavit of service by mail.]

[Endorsed]: Filed June 21, 1946.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled action was consolidated for trial with United States v. 193 acres of land in the City and County of San Francisco, State of California, Civil 22261-R and United States v. Certain land in the City and County of San Francisco, State of California, Civil No. 22147, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche present a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr., and J. Harold Weise, Special Attorneys appearing for the plaintiff, United States of America, and Robert W. Kenny, Attorney General of the State of California, Harold B. Haas, and Miriam E. Wolff, Deputies Attorney General, appearing for the State of California, and the evidence having been duly taken and heard and the cause submitted for decision, the Court makes and files its Findings of Fact and Conclusions of Law as follows: [137]

That the Complaint in the above entitled action was filed on the 24th day of December, 1942; that on the 23rd day of April, 1943, plaintiff filed a Declaration of Taking and deposited in the Registry of the Court, the sum of Two Hundred Ninety-Seven Thousand Twenty-Eight and 50/100 Dollars

(\$297,028.50) estimated just compensation for the taking of the property the subject of this action of which said sum One and no/100 Dollar (\$1.00) was deposited for the taking of Parcel 2 as hereinafter more particularly described. That on said day, April 23, 1943, a Judgment on said Declaration of Taking was entered decreeing that the title to all the land subject of the above entitled proceeding, including the land herein referred to as Parcel 2, and hereinafter more particularly described, vested in the United States of America in fee simple and the right to just compensation therefor vested in the persons entitled thereto upon the filing of said Declaration of Taking.

II.

That the above entitled action was instituted and the lands the subject matter of said action are taken and condemned pursuant to and under the provisions and authority of, and for the purposes and uses authorized by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress) and the Act of Congress approved February 7, 1942 (Public Law 441, 77th Congress).

III.

That said lands were taken and condemned under the authority of the above mentioned acts of Congress for the expansion of facilities at the Naval Drydock, Hunters Point, San Francisco, California, and are suitable and necessary for said purpose;

that said use of said lands constitutes a public use, and that the acquisition of said lands by plaintiff was of the greatest public benefit and the least private injury.

IV.

That service has been properly made upon all persons interested in said lands hereinafter described: [138]

V.

That prior to September 9, 1850, the lands subject of this trial were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date, California was admitted into and became a member of the union of states upon an equal footing with the original states in all respects, and thereupon and by that fact acquired tide and submerged lands involved in this trial; that the Act of 1868 (Stats. of Cal. 1867-68, Page 716) created a Board of Tide Land Commissioners, and authorized and directed the said Board to take possession of all the salt marsh and tide lands and lands lying under water, situated in the City and County of San Francisco, and to cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide; that after completion of such preliminary survey, the Board was directed to establish the Water Line Front of San Francisco, and cause all the property belonging to the State lying south of Second Street, within the said County to be surveyed into lots and blocks.

That the said Act further authorized and directed the said Board to prepare maps of the area as resurveyed and to cause the lots as so established to be sold at public auction; that pursuant to said Act, the Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869.

That none of the lands claimed by the State of California in this action had been reclaimed at the time said action was commenced and that all of the land so claimed was tide or submerged lands.

VI.

That pursuant to said statute, said Tide Land Commissioners sold, at public auction, all the right, title, and interest of defendant, State of California, in and to the property in said lots exhibited on said map and said sales were by lots in accordance with said survey and map. [139]

VII.

That said Parcel 2 embraces and is a portion of certain streets and alleys exhibited and delineated upon said map, "Map of Salt Marsh and Tide Lands and Lands Lying Under Water."

VIII.

That the interest or title that defendant, State of California, retained in said Parcel 2 was retained only for the purpose of providing ingress and egress

to said lots sold and that the interest or title of defendant, State of California, in and to said parcel at the date of the taking herein was subject to easements for access to and from said lots exhibited and delineated upon said survey and map.

IX.

That said Parcel 2 is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Donahue Street, on the north and east by the Water Line Front and the southeasterly line of Coleman Street and on the south by the "Stanford" patent line. Containing 8.73 acres more or less.

That just compensation for said parcel including any and all damages to the larger tract of which said Parcel 2 is a part is the sum of One and No/100 Dollar (\$1.00).

X.

Except as hereinbefore more particularly set forth all of the allegations, the Plaintiff's Complaint are true.

XI.

Except as hereinbefore more particularly set forth all the allegations of the answer and amended answer of defendant, State of California, are not true.

Conclusions of Law

I.

That the Court has jurisdiction of the parties and the subject matter of this action. [140]

II.

That the use for which the property is taken is a public use of the United States and that the United States is authorized by law to acquire the same by condemnation.

III.

That the damage suffered by the State of California for the taking of parcel 2 is the sum of One and No/100 Dollar. (\$1.00.)

IV.

That a Judgment of Condemnation in the form provided by law shall be made and entered herein.

V.

Let Judgment be entered accordingly.

Done in open court, this 22nd day of January, 1947.

MICHAEL J. ROCHE,
Judge.

Receipt of the foregoing Findings of Fact and

Conclusions of Law is hereby acknowledged this
12th day of December, 1946.

ROBERT W. KENNY,
Attorney General of the State
of California,

By HAROLD B. HAAS,
Deputy Attorney General
for Defendant State of
California.

[Endorsed]: Filed: Jan. 22, 1947.

In the District Court of the United States in and
for the Northern District of California,
Southern Division

No. 22416-R

UNITED STATES OF AMERICA,
Plaintiff,
vs.

Certain land in the City and County of San
Francisco, State of California, WILLIAM
HENRY ASH, et al.,
Defendants.

PRELIMINARY JUDGMENT AS TO
PARCEL 2.

The above entitled action was consolidated for
trial with United States v. 193 acres of land in the
City and County of San Francisco, State of Cali-

fornia, Civil 22261-R and United States v. Certain land in the City and County of San Francisco, State of California, Civil No. 22147-R, and came on for hearing the 25th day of June, 1946, before the above entitled Court, the Honorable Michael J. Roche presiding, a jury having been waived by all parties, the cause having been duly and regularly continued to June 26, 1946, for further hearing and M. Mitchell Bourquin, Special Assistant to the Attorney General, John J. Healy, Jr., and J. Harold Weise, Special Attorneys appearing for the plaintiff, United States of America, and Robert W. Kenny, Attorney General of the State of California, Harold B. Haas and Miriam E. Wolff, Deputies Attorney General, appearing for the State of California, and evidence, both oral and documentary, having been introduced by the parties hereto and the case having [142] been fully tried and presented to the Court, and briefs having been submitted by the respective parties and the cause having been submitted for decision on the 19th day of October, 1946, and the Court having heretofore filed its written Findings of Fact and Conclusions of Law;

Wherefore, by reason of the law and the findings herein.

It Is Hereby Ordered, Adjudged and Decreed:

I.

That title to Parcel 2, the subject of the above entitled action, will vest in the United States of America in fee simple absolute upon the deposit in the Registry of this Court of the compensation therefore herein awarded.

II.

That said Parcel 2 is that certain piece or parcel of land situate in the City and County of San Francisco, State of California, and more particularly described as follows:

All those certain streets and avenues lying within an area bounded on the west by the southeasterly line of Donahue Street, on the north and east by the Water Line Front and the southeasterly line of Coleman Street and on the south by the "Stanford" patent line. Containing 8.73 acres more or less.

III.

That the defendant State of California is awarded the sum of one dollar for said Parcel 2 together with interest from the date of entry of this Judgment until paid.

Done in open court, this 22nd day of January, 1947.

MICHAEL J. ROCHE,
Judge.

Approved as to form:

FRED N. HOWSER,
Attorney General of the
State of California.

By MIRIAM E. WOLFF,
Deputy Attorney General.
Attorney for the State
of California.

[Endorsed]: Filed and entered Jan. 22, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Honorable Michael J. Roche, judge of the District Court of the United States, Southern Division, Northern District of California, and to M. Mitchell Bourquin, Esq., Special Assistant to the Attorney General, and John J. Healy, Jr., and J. Harold Weise, Esqs., attorneys for plaintiff:

You and each of you will please take notice that the defendant, State of California, hereby appeals to the United States Circuit Court of Appeals, Ninth Judicial District, from that portion of the preliminary judgment as to parcel 2 therein awarding defendant, State of California, the sum of One Dollar for its interest therein and denying defendant, State of California, any further or additional compensation for the taking of said property.

Dated: April 21, 1947.

FRED N. HOWSER,
Attorney General.

HAROLD B. HAAS,
Deputy Attorney General.

MIRIAM E. WOLFF,
Deputy Attorney General.

[Affidavit of service by mail.]

[Endorsed]: Filed April 21, 1947. [144]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That Pacific Indemnity Company a corporation duly organized and existing under and by virtue of the laws of the State of California, and duly licensed to transact a surety business in the State of California, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty and No/100 Dollars (\$250.00), to be paid unto said United States of America, for which payment well and truly to be made Pacific Indemnity Company binds itself, its successors and assigns firmly by these presents.

Signed, Sealed and Dated this 10th day of March, 1947.

The condition of the above obligation is such that [145] whereas State of California, defendant in the above entitled cause, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of the above entitled court entered in said cause on the 22nd day of January, 1947:

Now, Therefore the condition of the above obligation is such that is the said appellant, State of California, shall pay all costs if the said appeal is dismissed or the said judgment affirmed, or such costs as the appellate court may award if the said judg-

ment is modified, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

It is further stipulated as a part of the foregoing bond that in case of a breach of any condition thereof, the above named District Court may, upon notice to said surety of not less than ten days; proceed summarily in the above entitled action to ascertain the amount which said surety is bound to pay on account of such breach and render judgment therefor against said surety and award execution therefor.

[Seal]

PACIFIC INDEMNITY
COMPANY,

By R. L. TRAVISS,
Attorney in Fact.

State of California,

City and County of San Francisco—ss:

On this 10th day of March in the year one thousand nine hundred and forty-seven before me, Emily K. McCorry a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared R. L. Traviss known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said R. L. Traviss acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] EMILY K. McCORRY,
Notary Public in and for the City of San Francisco,
State of California.

My commission expires December 21, 1950.

[Endorsed]: Filed April 21, 1947. [146]

In the District Court of the United States, in and
for the Northern District of California, South-
ern Division

No. 22416-R

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, et al.,

Defendants.

ORDER FOR TRANSMISSION OF EXHIBITS
TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT

It appearing to the court that the exhibits in the above entitled matter consist of maps, diagrams and original papers, not capable of reproduction in the printed record,

Now, Therefore, It Is Hereby Ordered that copies of the original papers and exhibits which were introduced in evidence during the trial of said cause need not be copied in the Record on Appeal in said cause to be filed in connection with the appeal of said defendant and appellant, and that all original papers and exhibits introduced in evidence at the trial of said cause in the above entitled court by plaintiff, United States of America, and defendant, State [149] of California, with respect to Parcel 2, together with all the original papers and exhibits introduced in evidence at the trial of said action with respect to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of section 22261-R, which actions were consolidated with the above entitled action for the purposes of trial, may be transferred and transmitted in their original form to the Court to which said appeal is taken, namely, the United States Circuit Court of Appeals for the Ninth Circuit; and

It Is Further Ordered that all such original papers and exhibits shall be included in and be a part of the Record on Appeal to the same effect as though copied therein.

It Is Further Ordered that the said exhibits and testimony introduced in evidence at the trial of Parcel 2 of the above entitled action were also introduced in evidence with reference to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of action 22261-R, which actions were consolidated with the above entitled action for the purposes of trial, and that the original papers and exhibits, all of which

are the subject of this Order, may be considered by the court with like effect with reference to Parcels 3-A and 3-B of action 22147-R and Parcel 2 of action 22261-R.

Dated: July 29, 1947.

GEORGE B. HARRIS

Judge of the U. S. District
Court

[Endorsed]: Filed July 29, 1947. [150]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Comes Now Appellant, State of California one of the defendants above named, and states that its appeal is from that portion of the judgment decreeing that the State of California is entitled to receive the sum of \$1.00 and no more for the taking of parcel 2, which was given, made and entered in the above entitled cause on the 22nd day of January, 1947, and that said appellant will rely on its appeal herein on the following points.

I.

That the above-named United States District Court erred in finding that the interest or title that defendant, State of California, retained in said parcel 2 was retained [151] only for the purpose of providing ingress and egress to said lots sold.

II.

That the said Court erred in finding that the interest or title that defendant, State of California, retained in said parcel 2 at the date of the taking herein was subject to easements for access to and from said lots delineated upon said survey map.

III.

That the said Court erred in finding that just compensation for the taking of said parcel 2 is the sum of One and no/100 (\$1.00) Dollars.

IV.

That the said Court erred in not finding that said property was never laid out upon the grounds as streets.

V.

That the said Court erred in not finding and in not concluding that the said property was never opened nor declared open as streets.

VI.

That the said Court erred in not finding and in not concluding that the said property was never dedicated as streets.

VII.

That the said Court erred in not finding and in not concluding that the said property was not subjected to any easement as streets.

VIII.

That the said Court erred in rendering its decision and making and entering its judgment herein in that the evidence was and is insufficient to justify the judgment rendered by said Court. [152]

IX.

That the said Court erred in rendering its decision and making and entering its judgment herein against the defendant, State of California, in that said judgment is contrary to the law and the facts.

X.

That the said Court erred in not making its judgment herein in favor of defendant, State of California, and against plaintiff United States of America in the sum of \$8,250.03.

Dated: June 15, 1947.

FRED N. HOWSER,
Attorney General of the State
of California,

/s/ HAROLD B. HAAS,
Deputy Attorney General.

/s/ MIRIAM E. WOLFF,
Deputy Attorney General,
Attorneys for Defendant,
State of California.

[Endorsed]: Filed Sept. 4, 1947.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 153 pages, numbered from 1 to 153, inclusive, contain a full, true, and correct transcript of the records and proceedings in the cases of United States of America, vs. 230.5 Acres of Land, etc., No. 22147 R, United States of America, vs. 193 Acres of Land, etc., No. 22261 R, and United States of America, vs. Certain Land, etc., No. 22416 R (Consolidated for Appeal), as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$41.00 and that the said amount has been paid to me by the Attorney for the appellant, herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of November, A. D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 22147-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

230.5 Acres of land in the City and County of San
Francisco, State of California, CARRIE F.
REDNALL, et al.,

Defendants.

No. 22261-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

193 Acres of land, City and County of San Fran-
cisco, State of California, MATILDA PRIOR
ANDREWS II, et al.,

Defendants.

No. 22416-R

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CERTAIN LAND IN THE CITY AND COUNTY
OF SAN FRANCISCO, STATE OF CALI-
FORNIA, et al.,

Defendants.

REPORTER'S TRANSCRIPT

Tuesday, June 25, 1946

Before: Hon. Michael J. Roche, Judge.

Counsel Appearing:

For Plaintiff: M. Mitchell Bourquin, Esq., John J. Healy, Esq., Thomas Martin, Esq., J. H. Weise, Esq. [1*]

For Defendants: Robert W. Kenny, Esq., Attorney General of the State of California, Harold B. Haas, Esq., Deputy Attorney General, Miriam E. Wolff, Deputy Attorney General.

The Clerk: United States of America vs. Land in the City and County of San Francisco.

Mr. Healy: Ready, your Honor.

Mr. Haas: Ready, your Honor.

Mr. Healy: May it please your Honor, your Honor will recall this trial was to have commenced about three weeks ago, and just after getting started, because of another case, this matter was continued until today. Your Honor requested that counsel make every effort possible to stipulate to as many facts as we could, so that we could simplify the issues.

We have agreed upon certain facts, and they were drawn up. The State drew up the stipulation; and certain portions we were not able to agree with until a short time ago, and with certain amendments made by our office, these facts will read as follows. A little later we will have this document transcribed and presented to your Honor.

* Page numbering appearing at top of page of Reporter's certified Transcript of Record.

The facts we now stipulate to are as follows:

That prior to September 9, 1850, a portion of the land subject to this action, and all of the lands claimed by the State of California, were tide and submerged lands covered by the waters of the Bay of San Francisco; that on said date, [2] California was admitted into and became a member of the union of states, upon an equal footing with the original states in all respects, and thereupon and by that fact acquired title to all tide and submerged lands involved in these cases; that said Act of 1868, page 716, created a Board of Tide Land Commissioners, and authorized and directed the said Board to take possession of all the salt marsh and tide lands and land lying under water, situated in the City and County of San Francisco, and to cause the same to be surveyed to a point within 24 feet of water at the lowest stage of the tide; that after the completion of such preliminary survey, the Board was directed to establish the Water Line Front of San Francisco, and cause all of the property belonging to the State lying south of Second Street, within the said County to be surveyed into lots and blocks.

That the said Act further authorized and directed the said Board to prepare maps of the area as resurveyed and to cause the lots as so established to be sold at public auction; that pursuant to said Act, the Board caused said surveys to be made and prepared the "Map of Salt Marsh and Tide Lands and Lands Lying Under Water," which map was duly adopted by the said Board of Tide Land Commissioners on March 19, 1869.

That none of the land claimed by the State of California in these answers had been reclaimed at the time said actions were commenced and that all of the land so claimed was tide [3] or submerged lands.

It is further stipulated that the acreage claimed by the State of California in Action No. 22416-R, Parcel No. 1 as described in the amended answer filed by the State is 0.79 acres and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and the parties pray that the court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22416-R, in Parcel No. 2 as described in the amended answer filed by the State, the State of California claims 8.73 acres, and the parties do stipulate that 8.73 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in Action No. 22416-R, Parcel No. 3 as described in the amended answer filed by the State, the State has been paid its damages and the matter is not at issue as to that parcel.

That in Action No. 22147-R, Parcel No. 1 as described in the amended answer filed by the State, the State of California claims 7.909 acres, and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and the parties pray that the court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22147-R, Parcel No. 2 as described [4] in the amended answer filed by the State, the State of California claims 13.376 acres and the parties do stipulate that 13.376 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in Section No. 22147-R, Parcel No. 3A as described in the amended answer filed by the State, the State of California claims 6.85 acres, and the parties do stipulate that 6.85 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

That in Action No. 22147-R, Parcel No. 3B as described in the amended answer filed by the State, the State of California claims 28.13 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California.

It is further stipulated that the acreage claimed by the State of California in Action No. 22261-R, Parcel No. 1 as described in the amended answer filed by the State is 1.884 acres, and that as to this said portion of the property, the plaintiff is compromising with defendant State of California and the parties pray that the court continue the hearing as to this parcel until a stipulation for judgment is filed.

That in Action No. 22261-R, Parcel No. 2 as described in the amended answer filed by the State, the State of California claims 64.61 acres, and the parties so stipulate that 64.61 acres is the correct amount of acreage in said parcel claimed by the defendant, State of California. [5]

That in action No. 22261-R, Parcels Nos. 3A and 3B, the United States of America is compromising the claims of both the State of California and the City and County of San Francisco, and the parties pray that as to said parcels the court continue this hearing until a stipulation for judgment is filed.

That the matters relevant to the causes and not herein stipulated may be heard and determined at the trial on said parcels.

I may say to your Honor now the portions that the gentleman has been pointing to while I have been giving to your Honor the facts stipulated to, all of the portions that appear in blue or, I should say, all of the portions other than in pink, are matters that we have agreed upon, and there is no issue, and your Honor will not be troubled to decide those. Your Honor will be only concerned with the portions on pink on this large map.

Those, your Honor, after considerable conferences and meetings, we believe are the facts we are able to stipulate on, and the other points of the case, I think, are at issue. Is that correct, Mr. Haas?

Mr. Haas: That is correct, your Honor. This map has been set up so that it can be clearly seen that the only things we are here litigating about are the areas colored in pink. All of the rest have been compromised out and are not at issue. [6]

The Court: Very well.

Mr. Haas: Much of the material of the opening statement I had planned to make has been stipulated to. However, we shall bring in another map. The long and short of it is that the Board of Tide Land

Commissioners, acting under the Act of 1868, prepared this map and sold certain acreages.

The map, from here, can be very misleading, unless closely watched. Actually, certain areas are completely covered by water. Down the center is the main spine of Hunters Point, which was granted prior to this period of the tide land, and was privately owned by the so-called Stanford Patent. This is a photostatic enlargement of the other map. This is tide and submerged, and this is tide and submerged. As stipulated, what happened was, they took the existing upland pattern of blocks and so forth, and projected them out in the water, and it is on the map that you see marked as "Streets" and "Market places", and so forth. This is just simply open water, and unless that is remembered, the map can be extremely misleading. The statute directed they carry out the block plan, and that is why it was done that way.

We shall prove that all the area sold to private purchasers was confined to metes and bounds descriptions, but these metes and bounds descriptions were carefully drawn in each case to the inner line of the street, which under the settled California law means that the property owners' title [7] goes only to the inner line of the street and not to the center, as otherwise would be the case under the presumption of the Code of Civil Procedure. We shall supply cases, if you desire, on that.

By virtue of certain enactments of the Legislature, the City and County of San Francisco made claim to portions of the area, and that, of course,

has been compromised, and the City and County, therefore, is not a party to this hearing, although it is my understanding that in countering the State's claim of title, certain statutes involving the City and County of San Francisco will be urged, and there is a somewhat peculiar difficulty there.

In these condemnation suits, you cannot get quite the precisions of pleadings to define the issues as you do in the ordinary civil action.

We have most all of our proof in. We will put in more, but in connection with the statutes, which I understand the United States will urge, and we shall in a sense have to anticipate rebuttal.

We must have expert testimony to show the arrangements to which those statutes apply, and why our interpretation of that differs from the United States, and we believe our interpretation is correct, and that the factual proof involved will show the contention of the United States is not correct.

I think that in connection with this whole situation, it should be realized that the original plan for Hunters Point [8] development, back in 1868 and 1869, was very similar to that of lower San Francisco, and identical with that portion around Channel Street. The State had a sort of technique it worked out in developing the area around San Francisco Bay on this side. They granted these water lots or areas of water. *They* really sounds funny, but as it worked out they granted them on the basis of a map like this, and there is a similar one of the water lots; and in that area they retained the bulkhead strips, and when reclamation took

place the State ended up with possession of wharf sites out there, and it is a matter of history of which your Honor can take judicial notice: For instance, that the entire expense of the building of the waterfront here, and of the maintenance order of, I would say now, about 50 decades, or more, has been paid out of the revenues of those wharves, and it is operated at the present time by a State Board. That is the historical reason why the State of California has this waterfront in San Francisco, whereas many others have been granted to various cities and counties. But it worked out of that plan, which, of course, was speculative, and at that time no one knew what direction San Francisco would develop, and this was just one more sale of tide land lots, that everybody was going to make a profit out of, and the State was going to end up with waterfront property of great value.

This followed down to Second Street. This was a 99-year [9] lease, instead of being handled like the other land, but it is substantially the same (indicating on map).

There is some confusion that should be cleared up right now——

The Court: The confusion will be laid at rest if the State would give us that property, the harbor, and everything in relation to it. I thought they were going to do that, and I am hopeful that the City will acquire all of it.

Mr. Haas: It may not be too late, your Honor. But there is a clearcut picture of this as set forth in the memorandum of the Honorable James Alger Fee, who tried a portion of the case.

I will give you the history of it. One of the blocks, I think 708, or parcel 594, was to be limited. The State, in an effort to get a simple case, to have its claims determined in connection with these strip areas, intervened and filed an answer, claiming title to the centers here, and the private owner also claimed title out to the center. I don't know whether the judge had a clear picture as to the source of title in the matter, because he seemed to have the picture in mind that all the State had was an easement. Actually, the State had the fee, but that was not at all clearly brought out. The State lost in its claim and appealed the case to the Circuit Court of Appeals.

The Circuit Court of Appeals said two things: First, the [10] Circuit Court of Appeals said on that basis that there would have to be 272 separate trials, one trial for each parcel, that the State should call for a single valuation here in the case. We carried that one step further. We asked to consolidate all cases, so we are having a single valuation here on all three cases. The second point was that the State, never being in that trial properly, being improperly in the trial, the matter should be tried as a whole.

So that is the picture.

Now, another thing that is admitted is that the property was always under water. That applies to this area. It is all tide land area, and was long before the time these suits were filed; in fact, so many years before that we cannot get the exact date that the bulkhead and pierhead lines were estab-

lished along this waterfront, leaving the State title to the ground upon which these future wharf sites appear to be built. That particular claim is being compromised, so I won't dwell on it. That is one of the blue parcels being compromised, and the title to that is being admitted.

Briefly, the case of the State is that these strips never actually became streets, that they were laid out on a map, but by reason of never actually becoming streets, they simply constitute strips of land which the State is now claiming as acreage in the proceeding.

The Government, I believe, contends that these are, in effect, streets. In that connection, and as background on [11] the case, I think I should refer your Honor to the case which is ultimately the foundation of our claim here as to the streets. That is the case of *United States vs. Benedict*, Circuit Court of Appeals, Second Circuit, 1922, involving the condemnation of an area in New York with the Bethlehem Shipyard. The area was in the City of New York.

Very briefly, and I must ask your Honor's indulgence for giving these facts to you, because you will see how the evidence connects up with this case, in that case this area on the shore of the bay was condemned. It belonged to a private estate. Therefore, the proceedings were against the executors and so forth. Now, before his death, the decedent had planned to set up a subdivision development there of some sort, and had granted strips of land reaching in from the bay for street purposes to the City

of New York, and granted them in trust for street purposes, for strips of land. The street strips so granted were never opened. It was all one solid block. In the condemnation in the district court, the entire award was made to the State on the basis that these strips were streets, and under the established rule in condemnation, the value thereof should be absorbed in the surrounding property. The Circuit Court of Appeals, on appeal, in its decision, pointed out that the streets had never been opened, that this doctrine of absorption of value into the surrounding property depended upon the opening of the streets, because it was that [12] opening of the streets that gave the value to the surrounding property. Therefore, the City of New York, at the time of the condemnation owned that property, and the court held that the United States must take the land as it stood at the time of the condemnation, and the question of future use was reaching ahead into speculation, and therefore the City of New York was entitled to a value which the court said was a proportion of the acreage which these strip areas and street areas bore to the total acreage, and gave the executors the choice of either accepting a diversion of the portion of the award to the City of New York in that proportion; or of the reversal.

The executor accepted. I think about three months passed, and then the City of New York woke up to the fact that they only had claimed tide land down to the high water mark. So they applied for certiorari to the United States Supreme Court on the basis that they should have been paid for the

portion below; in other words, they had not set up the portions properly on the appeal. The Supreme Court said that having taken the money, the effect of that foreclosed them, and denied certiorari.

In the Benedict case, it was never questioned that the dedication for street purposes was complete. The conveyance was in trust for streets, and the authorities in such a case would hold that the city could not, under any condition, change that acceptance in trust, except, possibly, by conveyance [13] back to the land owner. So that we have a different situation.

I think, your Honor, we are going to ask to put this on briefs, with your Honor's permission, when it comes to the law. We don't believe it is a dedication and acceptance. The United States contends it is. That merely strengthens our case, from our point of view, because, basically, the court's concern is not what the future use of the street area is to be. It is what was done at the time of the condemnation.

The Court: We will take a recess for a few minutes.

(Recess.)

Mr. Healy: Are you finished, Mr. Hass?

Mr. Haas: Yes, I am finished with my opening statement.

Mr. Healy: May it please your Honor, I should like to add a few remarks to those made by Mr. Haas, with the thought perhaps that we could make it a little easier for your Honor as the evidence

goes in. This map which is on the board now, as your Honor may quite well see, is a segment of the map which the State, I think, will produce here later, a segment of this map which is so well known to all of us, and is known as the "Map of the Salt Marsh and Tide Lands Lying Under Water in the City and County of San Francisco." That map, at the most northerly extremity, is from Second Street, and extending in the area to the south and to the southeast of it. Your Honor will probably note there is a dark line that [14] runs along here that extends out to what was then Hunters Point up until the time the Government came along and filled in a lot of this area during this last war.

All of this land in this direction, which would be to the south, was under water, and all of the land to the north of the dark line was under water. The only land that was high land was within the embrace of this dark line (indicating on map).

Now, as your Honor knows, there are three actions that are being consolidated here for trial. The State has filed an answer in each of these actions, in which it has attached this entire map to each of the answers as an exhibit, and has claimed that it owns certain portions of the area which are set out on the map as streets. I should like to point out to your Honor that this map was made by the Board of Tide Land Commissioners pursuant to the statute of 1868 which was referred to in the stipulation, at page 716 of those statutes.

I should like to point out to your Honor, and this is a matter that your Honor can take note of

because it is the statute of this State, that by that act a commission of three men was set up with authority, in brief, now, "to survey all these lands south of Second Street, and to dispose at public auction of all right, title and interest of the State of California in and to the property in the lots described in section 4 of this Act, such sales to be by lots in accordance [15] with the survey and map provided for."

I have quoted just now from the statute, itself. It is our theory in this case, may it please your Honor, that this statute of the State of California, which authorized the drawing of this map, the surveying of the land, the holding of the auctions, the sale of the land, and the giving of deeds was all to to be done by lots, which was done—lots and blocks; that, as a result thereof, the State of California did divest itself of all title in and to these areas here that are demarcated as streets; that if they retained anything in that area, and I say if they retained anything in that area at all, they retained a naked, bare fee to be held in trust for the public for street purposes, and that if the court should hold that they even retained that naked, bare fee, if I may use the words, that any value that would be ascribed to that is reflected in the value of the lots adjacent to the streets, and which has been already paid to these various landowners that we have already settled with.

In this particular case, 22147-R, which is embracing this area here, and also the area over in here, one of the defendants, by the name of Hutchinson, owned, as Mr. Haas stated, this block 708.

I should like to, I think, correct Mr. Haas in one statement, that he, inadvertently, I believe, made, that the State of California filed an answer in that particular action. I think they did not, Mr. Haas, file a separate [16] answer for the trial of that parcel, but it was just the same answer that is before his Honor today, in which they claim all of these streets.

A trial was had early in 1944. His Honor, Judge Fee, presided, and Judge Fee wrote a short memorandum opinion, declaring that the State of California, if they had any interest at all, was, and I quote his language, "A mere hypothetical interest to which it was not entitled, for which no compensation should be paid."

The State of California took an appeal to the Circuit Court of Appeals, and the Circuit Court of Appeals wrote an opinion which appears in—and your Honor has probably seen it—153 Fed. (2d) at page 558. The State of California held that error had been committed in trying this area of streets around that one parcel, because as the Circuit Court said, you would have to have 250 or 300 trials, that all of the street areas should be tried together, but the Circuit Court of Appeals did not reverse or criticize or disparage the holding of Judge Fee, who stated in his opinion that the State had a mere hypothetical interest. As a matter of fact, they specifically said they would not pass on the question.

The court said:

"We do not here decide what right, title or interest, if any, the State may have, or possess

in any of the street areas in the said 238-acre tract of land. That [17] sent it back to this court for trial as to what, if any, interest the state has in these street areas, first; and secondly, if they have any interest, what is it worth, if anything."

Now, I should like to add another point there, too, may it please your Honor. The City and County of San Francisco had an answer in all three cases, in which they made practically the same claim that the State has. The City said they owned the streets. The City's attorney appeared here on June 4th when this case was first called for trial, and upon settlement being reached for these market place areas, here, the City has walked out and makes no claim for these long strips, that is, these street areas.

I should like to point out to your Honor, further, that there is one case, and only one, that I know of that discusses all phases of his problem, and it is a case that, while it may not be entirely controlling, I think it is most instructive, and the principles therein enunciated are directly in point, because it deals with the same map, the same land—a little further north—and almost the same problems, and that is the well-known case of *Magin vs. The State Board of Harbor Commissioners*, reported in 113 Cal. App., at page 698, while I will not discuss the law with your Honor at this time, I think it appropriate that I say to your Honor that it will be one of our contentions that the principles of law laid down [18] and enunciated in the *Magin* case, will apply here.

Now, that the State prepared this map pursuant to this statute of 1869, by direction of the statute, these three gentlemen, these commissioners were authorized, first, and directed to sell all this territory by lots, that they did sell, and that in selling, as pointed out in the Magin case, they cannot at this late date contend they have any interest whatsoever in these lots; but it is our contention that as Judge Fee said, even if they have some hypothetical interest, that hypothetical interest in these streets 20 feet under water is only nominal.

I don't know whether I have assisted the court at all, but I have tried to, and those are the points, your Honor, that we rely upon in this case.

I would like to point out further to your Honor and say this, that there may be some evidence adduced here as to the kind and character of the deeds that were actually issued by the Board of Tide Land Commissioners to the original owners. I think a great many of them were burned in the San Francisco Fire and Earthquake of 1906.

It is one of our contentions that the form of the deeds, if some of them are produced, is immaterial, because the form of the deed cannot differ or vary from, nor be at variance from the mandate of the statute of 1868 that ordered these three tide land commissioners to sell this area by lots, and [19] whether the form would be different or not, there may be an argument. But under well-settled law that we will point out further to your Honor, the statute must be read into the deeds, and the deeds cannot be different from or construed to be different

from the fountainhead or authority, which is the statute authorizing the commissioners to sell by lots.

Again, may I say to your Honor, I want to avoid reading law to your Honor, but I feel I must read just one more quotation from the Magin case:

“That the sale by lot number and not by metes and bounds, but by reference to a map which the owner has recorded for that purpose, constitutes an acceptance irrevocable to the purchaser as to the portions designated on the map as public streets, has never been disputed.”

That brings us to the conclusion that the State of California has divested itself of all interest in and to these long strips of land, 18 or 20 feet under water, and it will be our contention they have done it on this portion of the map (indicating).

It is our contention they have divested themselves of all proprietary interest, and secondly, even if they have a hypothetical interest, as Judge Fee said, that is reflected in the value that is ascribed to the adjoining lots, and at the most the compensation to be paid should be nominal.

The Court: Keeping in mind what Mr. Healy has been discussing, [20] I did not follow your New York City case. What is your reaction to that case? Are you familiar with it?

Mr. Healy: Yes, your Honor, we are familiar with it. In the New York case, there are a number of differences. One as we understand the law in New York, it is not as settled as it is in California. In New York, the rule of property prevailing, ap-

parently does not give the adjacent property owner a permanent easement in the street, as it does in this State. In this State, as many authorities are cited in the Magin case, when a conveyance is made by, shall we say, a subdivider, whether it is the state or the private owner, and he conveys by a lot and block, the presumption is that he conveys clear out to the center of the street, and when he conveys out to the center of the street he has no further interest therein.

The rule of property in New York seems to be at variance to the rule of property in this State. What we are saying is not something thought up in the Lands Division of the Department of Justice. This has been threshed out in the Magin case, and this has been threshed out in the old case of *People vs. Johnson*, in 64 Cal., wherein the court definitely said that by another statute to which I haven't yet called your Honor's attention to, the statute of 1872, that by that statute the State of California conveyed all those streets, lock, stock and barrel, if I may use the phrase, to the City and County of San Francisco. That is not our statement. [21] That is the statement of the Supreme Court of the State of California in *People vs. Johnson*, in 64 Cal.

I again state to your Honor I do not desire to read law, but since your Honor asked me the question——

Mr. Haas: I beg your pardon; wasn't that the case of *People vs. Williams*?

Mr. Healy: Yes, that was the case of *People vs. Williams*, in 64 Cal. I now ask your Honor if

I may refer just briefly to the statute of 1872, not the statute of 1868, but the statute of 1872, in which the Supreme Court said that the State vacated all streets, alleys, market places within the exterior boundaries of the marsh and tidelands as surveyed by the Tide Land Commissioners, and granted the lands covered by them to the City and County of San Francisco, with full power to regulate, manage, control and dominate, or dispose of the same by ordinance for railroad and other commercial purposes.

I know that counsel will say that the Supreme Court was wrong in that they did not consider the statute correctly. I am not saying that the Supreme Court was right or wrong, but the Supreme Court, definitely, in 1884, when these things were probably fresher in the minds of the men writing the opinions, held that the statute of 1872 was valid and the State had divested itself of all interest to that property——

The Court: Assuming it is wrong, it was still the law of the State of California. [22]

Mr. Haas: If it is the law, your Honor.

Mr. Healy: Those are the remarks I wanted to express to your Honor, what our contentions are.

The Court: Does counsel for the State want to comment on the differentiation of the land laws of the State of New York and the State of California?

Mr. Haas: For two reasons I will not, unless the Government's contention as to the interpretation of the statute be completely accepted. In this case there is no difference, since the deed is conveyed to the

center of the street, anyway. The only purpose for which I brought up the case was to give a clear picture of what I wanted to bring, and I would suggest we brief these matters at a later time.

The Court: All right.

Mr. Haas: I am here going to offer, pursuant to the complaint and the instructions of the State of California, a certified copy of the Resolution of the State Lands Commission of the State of California requesting that no further alienations of any kind of State Lands or tide land or mineral rights be reserved to the State.

We have asked your Honor, as a matter of record in this case to make such a reservation on this property. I won't go into the law as to whether you could do that, or not, but for the record we offer this in evidence.

Mr. Healy: Let it be received. We understand, however, [23] that any defendant is not able to cut down the estate that the Government desires to take. In other words, the Government here seeks, through a deed by the operation of law, by the filing of a declaration of taking, to condemn the property and asks that the mineral rights be included.

We object to that document on the ground it is incompetent, irrelevant and immaterial.

The Court: I will allow it in evidence subject to your motion to strike.

(Resolution of State Lands Commission
marked Defendants' Exhibit A.)

HAROLD E. GEORGE,

called as a witness on behalf of defendants; sworn.

The Clerk: Will you state your name to the court? A. Harold E. George.

Direct Examination

By Mr. Haas:

Q. Your address, Mr. George?

A. 301 State Building, Los Angeles, is my business address.

Q. You are an associate civil engineer of the Division of State Lands? A. Yes, sir.

Q. Are you licensed as a civil engineer?

A. Yes, sir.

Q. For how long?

A. Roughly, since the law first went into effect in 1929 or 1930.

Q. How long did you actively practice the profession of civil [24] engineering prior to that time?

A. It is a little difficult to say, but off and on since 1918.

Mr. Haas: This is a certified copy from the custodian of the original map of the Salt Marsh and Tide Lands, and the Lands Lying Under Water. The map was prepared by the Board of Tide Land Commissioners in accordance with the Act, entitled "An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State of California, Approved March 30, 1868." And, your Honor, I may mention, it contains a notation. "Scale—500 feet to 1 inch."

(Testimony of Harold E. George.)

The Court: For the purpose of the record let it be admitted and marked.

(Map marked Defendants' Exhibit B.)

Q. (By Mr. Haas): Mr. George, you are a member of the American Society of Civil Engineers? A. Yes.

Q. You have made a study of this map which has just been admitted as Defendants' Exhibit B?

A. Many times.

Q. Now, you have seen the blown-up portion of the map that is on the other side?

The Court: Offer it, so the record will be clear.

Mr. Haas: I want to offer it, your Honor. Will you gentlemen stipulate to having seen the other portion?

Mr. Healy: Of course, we have been talking about it all the time.

Mr. Haas: I offer that as Exhibit 7. [25]

(Blown-up portion of map marked Defendants' Exhibit C.)

Q. (By Mr. Haas): I will ask you to state from your own knowledge the nature of that blown-up large map there—just what is it?

A. The blown-up portion of the map is a photostatic copy, in blown-up size, of a portion of the map which is facing you?

The Court: Outline it.

A. One on this, you mean?

The Court: Yes.

(Testimony of Harold E. George.)

A. It is roughly an area right in—something that, taking in that portion, and eliminating all of this larger area.

Q. (By Mr. Haas): And the scale of that map is true to the scale of the original from which it was blown up?

A. Very accurately so, considering the photo-static method of enlargement.

Q. That scale is what, approximately?

A. That scale on the larger map is 1 inch on the map for 100 feet on the ground.

Q. Turning to Defendants' Exhibit C, the blown-up map, I ask you, for the record, what is represented by these areas marked in pink, but which, I might point out, consist of certain portions of streets numbered successively, Eleventh Avenue to Nineteenth Avenue, and portion of a street marked "Waterfront Street," certain portions of the street marked, respectively, "Waterfront Street, Front Avenue," and First to Fourth Avenue, consecutively, certain portions of streets marked "C" [26] Street, China Street, "B" Street, "A" Street, Ship Street, Dock Street, Tevis Street, it being understood that I referred to the term "Street" for identification on the map. Will you tell the meaning of the pink markings?

A. Those are the areas that were intended as streets by the surveyor who made this map for the Tide Land Commissioners.

The coloring was done under your supervision, was it not? A. Yes, sir.

(Testimony of Harold E. George.)

Q. What, if anything, was your guide in marking those particular portions pink?

A. Various maps, including the one on the opposite side of the board, which is, Defendants' Exhibit B.

Q. I will put it another way: Why were those particular portions of the streets marked pink?

A. Because they were areas which were not sold by the State, the way we understand it.

Mr. Healy: We move to strike the answer as non-responsive and as calling for the opinion and conclusion of the witness.

The Court: It may go out.

Q. (By Mr. Haas): Did you or did you not have before you, in determining the extent of the portions of these arrangements which are marked pink, and where you would stop marking them pink and leave the original coloring there, did you have before you a description? A. Yes, we did.

Q. What were those descriptions?

A. Also, the description of the grant—you mean of this area in the center?

Q. Of the pink, the portions marked pink. [27]

A. At what part they stop?

Q. Yes, why did you stop the portion that is colored on Thirteenth Avenue at a certain point in the block marked on the map between "A" Street and Ship Street? Why did you stop here?

A. That was the point I wanted to clear up. That is a line called the Stanford Line, and is the boundary line of the grant to the San Francisco Homestead Railroad Association by the State Legislature.

(Testimony of Harold E. George.)

Q. But what document did you use from which you knew you should stop the marking from the Stanford Line?

A. From the Legislature. That was already granted to somebody else.

Q. I will ask you if these areas in pink have any relations to the descriptions in the complaint in condemnation?

Mr. Healy: I will stipulate with you that those areas marked in pink are the portions you are claiming in the three actions, and these portions over here you did not mark in pink are portions of the old Stanford Grant which you do not claim.

Mr. Haas: I now must ask the question because I am anticipating rebuttal: Is it claimed that the statute of 1878, other than the Street Act of 1872, constituted a conveyance of these streets to the City and County of San Francisco?

Mr. Healy: You mean the statute I referred to in *People vs. Williams*?

Mr. Haas: Yes.

Mr. Healy: That is what the Supreme Court of the State of California said. It is fairly good [28] authority for me.

Mr. Haas: We will have to put on authority for the extent of that statute. I will ask to introduce a couple of documents with the thought of expecting to connect them up.

Mr. Healy: For whatever these may be worth we have no objection to those being offered in evi-

(Testimony of Harold E. George.)

dence, if you will explain to the court what they are and all about them. At least, explain where they are.

Mr. Haas: One of the defenses urged by the United States is that these street areas were granted to the City and County of San Francisco by the Statute of 1872, Chap. 490, copy of which I have here and available for your Honor's inspection. However, there is certain language in that statute the interpretation of which is sufficiently ambiguous to require proof. It is my purpose now, in offering this, to put in these exhibits as bearing on the interpretation of that statute, intending that these factual exhibits will conclusively show that the Supreme Court in its dictum in *People vs. Williams* was wrong, and further, as between the City and County of San Francisco and the State of California, the question of title to the street areas in these tide land grants is *res adjudicata* in favor of the State.

I will bring in evidence and records of the Superior Court to demonstrate that.

Mr. Healy: With the Court's permission, will you repeat your statement about *res adjudicata*?

The Court: The reporter will read it.

(Record read.)

The Court: Frankly, I don't quite follow you, Counsel.

Mr. Haas: I believe the contention of the United States is that the title to these street areas, some of

(Testimony of Harold E. George.)

which are here colored in pink, become street areas generally, in that the tide land grant was alienated to the City and County of San Francisco by the State under the statute of March 30, 1872, which is Chapter 490 of the Statutes of that year, so that it is 1871-2. What we are doing here, and I make this explanation because, otherwise, it might be a little obscure, is bringing in evidence, first, that the Supreme Court, in *People vs. Williams*, misinterpreted the statute.

The Court: Assuming they did misinterpret, the fact is it is still the law.

Mr. Haas: It was dictum in that case.

The Court: How am I to determine that?

Mr. Haas: By reading the case, and I think you will find, in bringing out the law——

The Court: You want me to disregard that case of the Supreme Court?

Mr. Haas: I expect you to.

The Court: I am not going to do that, and I say that so that you will arouse yourself to greater effort than you have even put forth so far, and I say that kindly to you.

Mr. Haas: I understand that, your Honor. [30] I think we can convince your Honor that the title to the portion of the streets included under the *People vs. Williams* interpretation of that statute has been litigated in the Superior Court between the City and County of San Francisco, the donee under this purported statutory grant, and the State of California, with the judgment for the State of Cali-

(Testimony of Harold E. George.)

fornia, which would be *res adjudicata* directly as between the City and County of San Francisco and the State of California, in which judgment was for the State of California. We will bring that in, your Honor, later on, and I think that shows the truer interpretation.

We offer to present expert testimony upon these grants which were cavalieredly passed upon by the Supreme Court in its dictum in *People vs. Williams*.

First of all, I wish to read here the provisions of the statute referring to this. They are rather confusing. The statute has been amended several times, but in the first editorial section it reads as follows:

“All streets and alleys in the City and County of San Francisco which lie within the exterior boundaries of certain salt and tide lands donated by the State to the Southern Pacific Railroad Company and Western Pacific Railroad Company for terminal purposes, being an Act entitled, ‘An Act to Survey and Dispose of Certain Salt Marsh and Tide Lands Belonging to the State [31] of California, Approved March 30, 1868,’ and also all streets and alleys within the exterior boundaries of lands lying within the boundaries of said lands, not donated to said railroad companies, be reserved for market places, known as Produce Exchanges, and the market places are hereby vacated and the lands covered by said streets and alleys and said market places, together with other lands set

(Testimony of Harold E. George.)

apart by the Board of Tide Land Commissioners for basins and known as China and Central basins, are hereby granted to the City and County of San Francisco, with full power to regulate, manage, control and dominate, or dispose of the same for railroad and other commercial purposes.”

That is a very confusing statute, and if there is any foundation for the statement of the Supreme Court in *People vs. Williams*, that means that every street in this area is vacated and the City and County of San Francisco has full title, because the State at that time had power to vacate the streets, and therefore, very conclusively, they are not streets, and the City and County of San Francisco is not entitled to full acreage value of all of them, if you accept the erroneous interpretation of *People vs. Williams*, because in donating them to the city, they vacated.

I am going to turn this around again, your Honor.

(Moving blackboard.)

This is preliminary to questioning Mr. George. We have [32] here Exhibit B, which is that map.

Q. Mr. George, I show you an original record of the original land of the Tide Land Commissioners.

A. Is that the same as you are showing me?

Q. You have a photostatic copy before you, which is entitled, “Map 6 of Salt Marsh and Tide Lands Situated in the City and County of San Francisco, to be Sold at Public Auction by Order of the

(Testimony of Harold E. George.)

Board of Tide Land Commisioners." I ask you if you have studied this map in connection with the map, with the main map?

A. Yes, sir, I have.

Q. Will you indicate what portion of the main map, if any, is covered by that map? (Addressing the Court:) I might add, your Honor, that was one of the same maps that was used in the sale of the lots. Just indicate that roughly, Mr. George.

A. It covered an area approximately in the northern part of the large portion of the map in China and Central Basins.

Q. And area near China Basin?

A. It is roughly this area in here (indicating).

Q. The record cannot show your hand movements. A. I am sorry.

Q. Indicate for the record the area.

A. It runs north from Islais Creek to China Basin and includes China Basin to Second Street.

Mr. Haas: I will offer the certified copy, again that being the original.

The Court: Let it be admitted and marked.

Mr. Healy: May I interrupt for a moment, your Honor, to register an objection that this evidence is incompetent, irrelevant, and immaterial for this reason, just getting down to the elements: The way the case is developing and the way, of course, we anticipated the case would develop, that the State is attempting to prove its title to the land in question; now, the State, apparently, is anticipating and is arguing and quarreling with the Supreme Court to

(Testimony of Harold E. George.)

demonstrate to your Honor that the Supreme Court was wrong about something over here. I say that with deference to counsel and your Honor, and as to the title over here, that is incompetent, irrelevant, and immaterial. The only thing now before this court is title within the perimeter of the lands in question, so I think we are quite a ways off in establishing it over here (indicating).

The Court: We will get counsel to commit himself for the purpose of the record. What is the purpose of this offer?

Mr. Haas: The purpose of the offer is to show the proper construction of the statute of 1872, Chapter 490, under which, according to the contention of the Government, the portion of the street areas within the present areas of condemnation is alienated by the State. The purpose of the offer is to show that an entirely different area was alienated by that statute; and to offer the necessary proof to identify that area to show that the Statute of 1872, Chap. 290, does not affect the situation in this case.

Mr. Healy: Again, I say I don't want to be discussing law, but counsel is anticipating, apparently, what I said would be one of our contentions a legal contention which right now we will say, with deference to counsel and your Honor, that the sole purpose would be to enlighten your Honor as to whether or not they have something which would have given them any interest in this land, not to disparage something the Supreme Court said about this land over here (indicating).

(Testimony of Harold E. George.)

The Court: I agree with you, counsel. But so he has a record when he gets over to the Circuit Court of Appeals, he will see it as closely as he thinks he sees it now. I have tried to indicate by suggestion I was not going to interfere with the Supreme Court. I am saying, if that is the law of the case, I must accept it as the law of the case, and the decision of the Supreme Court.

Mr. Haas: I don't believe that is the law of the case. The State was not a party to the proceedings from the point of view of litigating that particular piece of land.

The Court: However, you have slept with your case longer than I have and I will give you a record on it.

Mr. Healy: May we note an exception?

The Court: Note an exception for the benefit of the record. I am allowing it to go in subject to counsel's objection and subject to a motion to strike.

(The document was marked Defendants' Exhibit D.) [35]

Mr. Haas: I now offer, your Honor, certified copy of two documents, one consisting of an extract of the minutes of the Tide Land Commissioners, commencing with the date, Friday, June 11, 1869, and the other, consisting of certified copy of a patent to C. P. and S. P. R. R. Co., Tide Lands, San Francisco, which commences with the heading, "U. S. A." The copy of the minutes are offered as the next exhibit in order.

The Court: It may be admitted and marked.

(Testimony of Harold E. George.)

(The document was marked Defendants' Exhibit E.)

Mr. Haas: I offer the patent as the next exhibit in order.

The Court: It may be admitted and marked.

(The patent was marked Defendants' Exhibit F.)

The Court: At this time we will take a recess until two p.m.

(A recess was taken until two o'clock p.m.)

Afternoon Session, Tuesday, June 25, 1946

2:00 P.M.

The Clerk: United States vs. Certain Land of San Francisco.

Mr. Healy: I believe before the recess Counsel was offering in evidence the patent.

Mr. Haas: The patent and the extract from the minutes of the Tide Land Commission, showing the description of the railroad land.

Mr. Healy: May our objection be noted to the reception of those two documents on the same grounds that we objected to this map, Defendants' Exhibit D, on the ground that it is incompetent and immaterial and does not tend to show or throw any light upon whether or not the State has title to the land in question?

The Court: I tried to indicate that I agree with you, but I wanted to give Counsel a record.

Mr. Healy: I just wanted to state for the record that objection.

The Court: Let the record so show. I will allow the testimony to go in subject to a motion to strike and overrule the objection of Counsel.

Mr. Haas: If the Court please, I think my remarks before the recess may have given a false picture to the Court of our contentions in this matter with regard to the case of *People [37] vs. Williams*. I do not want to give the impression that we are trying to present proof that the Supreme Court was wrong in that case. Our contention is that that case properly falls in our favor. However, I think in reading that case it will be of great value to have in mind the evidence which I am now about to draw from this particular witness, and that is the basis. We are not contending that the Supreme Court is wrong, simply that the Government is misconstruing its statement in *People vs. Williams*.

HAROLD E. GEORGE

recalled for the State of California; previously sworn.

Direct Examination (Resumed)

By Mr. Haas:

Q. Mr. George, referring to the extract from the minutes of the Tide Land Commission, which has been admitted as Defendants' Exhibit No. E,

(Testimony of Harold E. George.)

the patent to the Tide Lands, which has been admitted as Defendants' Exhibit F, and the map, No. 6, of the Salt Marsh and Tide Lands, which has been admitted as Defendants' Exhibit D, I ask you if you made a study of these three exhibits?

A. I did.

Q. Did you or did you not find a relationship between the blocks, which on the certified copy are marked in yellow, the certified copy being Exhibit D, and the blocks described in the extract from the minutes as embodying the railroad grant and in the patent as embodying the railroad grant?

A. The blocks [38] marked in yellow on the map are shown the way they are described in the patent.

Mr. Haas: I want to call the Court's attention to the fact—and we will furnish, if you desire, a typewritten transcript of this and to the other counsel, because this is all longhand, being the records of 1869 and 1870—that there is in the railroad grant, to begin with, the grant was described by exterior boundaries, which exterior boundaries substantially comprehend these yellow blocks, and that grant or that proposed location was disapproved by the Commission and was followed by an approval of the location by block.

Also to clarify one matter this morning, in the act of 1869 and 1870, the direction to the Tide Land Commission to sell by lot is accompanied—and we will furnish you a copy of the wording of the statute for your convenience—is accompanied by a reservation of docks, basins, streets, market

(Testimony of Harold E. George.)

places, and so on. That is in connection with the theory that all the State's title had to be parted with.

The Court: Make it clear for the purposes of the record: What is the purpose of this offer?

Mr. Haas: The purpose of this offer is to give the factual background necessary to an interpretation of Chapter 490 of the Statutes of 1872, which, if not properly read, might give the impression that all the streets, all the street reservations in the entire Tide Land area, within the boundaries of San [39] Francisco County, had been vacated and turned over to the City and County of San Francisco.

The Court: Is it offered for that limited purpose?

Mr. Haas: For that limited purpose, your Honor.

The Court: Proceed.

Mr. Haas: Your witness.

Cross-Examination

By Mr. Healy:

Q. The area depicted on this map in evidence as Defendants' Exhibit D is located about how far removed from the closest portion of land that is claimed by the State in the three actions before the Court?

A. Do you mean in feet or miles?

Q. Any way you want to express it?

A. I will have to check that somewhat. It won't take but a moment.

(Testimony of Harold E. George.)

Q. Give us an estimate of that?

A. It won't take but a moment to do that. I would say roughly a mile and a quarter.

Q. About a mile and a quarter? A. Yes.

Q. So the land that Counsel has been discussing with you and interrogating you on, which is shown in this Defendants' Exhibit D, and which is referred to in this patent to the two railroad companies, Defendants' Exhibit D and Defendants' Exhibit E, is about a mile and a quarter from the subject property, will we say, the property that is involved in these three actions before the Court now?

A. That is right.

Q. I will ask you another question or two: All of this property [40] —there is no use talking about all the property on the large map; let us just talk about the property that is involved in the three actions—all the property that was involved in the three actions was sold and conveyed pursuant to the statute of 1868 by the Board of Tide Land Commissioners to private individuals, was it not?

Mr. Haas: Objected to as calling for the conclusion of the witness. That question is, I think, loaded with dynamite, since all the property includes other strips involved, and this man is not qualified as a lawyer to determine whether or not the various sales of blocks——

The Court: Counsel has indicated you have not laid the proper foundation for this testimony.

THE COURT: I have no objection to the question.

(Testimony of Harold E. George.)

Mr. Healy: I do not want to intrude on the Court's province either by a legal question. I will withdraw the question, with your permission.

Q. Without considering these strips that are indicated on the map as streets, how about the area between the streets, that is, the lots and the blocks? All that was sold off, was it not, to private persons?

Mr. Haas: Same objection.

The Court: If he knows he may answer.

Q. Do you know?

The Witness: I don't know for certain whether it was or not. [41]

Mr. Haas: It will be stipulated that with the exception of the market places, the lots and blocks inside the street lines were sold off to private individuals and corporations, and that the dispute is over whether or not the street areas were sold off. At least, that is contended, apparently, that they were.

Mr. Healy: I just wanted to know whether we understand each other on this. I am not asking anything about the streets now, because that is something for the Court to determine, but it is an agreed fact, is it not, Counsel, that the area between the streets, the lot and block area, was sold off to private ownership, to private owners, pursuant to the statute of 1868 by the Board of Tide Land Commissioners? That is so, is it not?

Mr. Haas: That is so, of course, subject to further evidence that we intend to put in as to the method of selling.

(Testimony of Harold E. George.)

Mr. Healy: We won't talk about the method of selling, but it was sold. Did I state it fairly and accurately?

Mr. Haas: I can't speak for the State. So far as our records show.

Mr. Healy: That is an agreed fact in the case?

Mr. Haas: Yes.

Mr. Healy: All right. That is all.

And the area that I was talking about is the area that is embraced within the confines of these three actions.

Mr. Haas: That is that portion of the area embraced [42] within the confines of these three actions——

Mr. Healy: Other than the Stanford grant.

Mr. Haas: I was going to say it was the Tide Land. We are making no claims to the central part, the Stanford grant.

I have here certified copies of deeds issued by the Board of Tide Land Commissioners, certain copies representing lots and blocks in each of the areas in the cases, together with certain certified copies of records of deeds, recorded deeds, in the office of the County Recorder of the City and County of San Francisco, which we proposed to bring into evidence as showing the method that these lots were conveyed by metes and bounds descriptions. There were several in the area embraced in each of the actions. I tender them for examination at this point. Photostating and difficulties in certification brought them to us rather late, otherwise we would have had

them in the hands of the U. S. Attorney before this so the delay would not have been necessary.

Mr. Healy: Can we look at these a little later?

Mr. Haas: That was my suggestion.

Mr. Healy: Fine. Suppose we leave them right over here.

E. B. FIELD

called on behalf of the State of California; sworn.

Q. (By the Clerk): Will you state your name?

A. E. B. Field. [43]

Direct Examination

By Mr. Haas:

Q. Your address, Mr. Field?

A. 369 15th Street, Oakland, California.

Q. Mr. Field, have you had experience as an appraiser? A. Yes, sir, 25 years.

Q. I would like you to state the type of appraisal work, and so forth, that you have done during that period?

A. I have appraised for the United States Government, various agencies, Army, Navy, Maritime Commission, the State of California, City of Oakland, Oakland Port Commission, Oakland School Board, Regional Parks, Southern Pacific, Western Pacific, Santa Fe Railways, Pacific Gas and Electric Company, many banks, trust companies, and innumerable individuals.

Q. Have you appraised in the course of that time Tide Lands of San Francisco Bay?

A. Yes, sir.

(Testimony of E. B. Field.)

Q. What knowledge have you of the values of Tide Lands in the San Francisco Bay?

A. I have been a real estate broker, buying and selling for clients, during the 25 years mentioned. We have bought and sold Tide Lands as well as, of course, other properties.

Q. You say you have testified for the United States as an appraiser, as an expert in a United States Court?

A. Many times, yes. I was on the Winehaven case. I worked for Mr. Healy in the Craig Oil Company case in Oakland; appraised the Port of Embarkation for the Army in Oakland, the shipyards on the [44] Alameda side for the Maritime Commission, Western Pipe and Steel; I appraised the San Leandro Naval Hospital for the Kaiser Yard in Richmond for the Maritime Commission; Camp Stoneman for the Army. Many of them, Mr. Haas.

Q. Are you familiar generally with the values of Tide Lands around Hunters Point?

A. Yes, sir.

Q. I direct your attention to this map, which is Defendants' Exhibit C, and calling your attention to the area thereon marked in pink, and I ask you if you have appraised the value of those areas?

A. Yes, sir.

Q. Directing your attention to the area represented in the uppermost portion of it marked by an arrow, Portion No. 22416, which represents the area so involved in Case No. 22416—

A. Yes, sir.

(Testimony of E. B. Field.)

Q. ———limited to the areas in pink, in your opinion, what is the reasonable market value of those strips?

Mr. Healy: Excuse me a moment, Mr. Field.

If it please your Honor, we object to the question on this ground: Inasmuch as the issue here is whether or not the State was the owner of these lands at the time the Government took title to them by the filing of the declaration of taking, we submit that the State as yet has offered no evidence which shows remotely or otherwise that it was the owner. We have had some evidence here about down towards China Basin, a mile and a half away, but the record, I submit, is devoid of evidence [45] that they were the owner of these streets in question in 1943 when the Government went into possession. The evidence, the Court will recall, was that they were the owner in 1850, when they became admitted as a sovereign state. Whatever the evidence was—I tried to get it from the last gentleman, but then it came by stipulation that all of these lots were sold off. The stipulation does not say how they were sold, but the statute takes care of that, and the Court has the statute before it as a matter of judicial notice. That statute says they must be sold by lots and blocks, and being lots and blocks the familiar rule of law comes in that the owner gets to the center of the street. So as the record now stands I submit there is no evidence that they were the owner in 1942 or 1943. I submit that is so, and that therefore evidence as to value would be out of place and immaterial.

(Testimony of E. B. Field.)

Mr. Haas: It was in anticipation of some such objection that I call your Honor's attention as to the provision of the statute directing the Tide Lands Commissioners to reserve streets, market places, wharf areas and similar areas for public accommodation from sale. I think if your Honor will read the statute—we have a copy here—you will see that that is necessary. I submit that you will have to construe the statute and construe it adversely in order to rule on this matter. I submit that this be let in subject to a motion to strike.

The Court: I think that probably would be the best thing. [46] I will allow it in subject to your motion to strike and over your objection.

Mr. Healy: All right, your Honor.

(Question read.)

The Witness: The property contained in Case 22416, I think the fair value as of——

Q. (By Mr. Haas): I am referring to the parcel in pink marked 2.

A. Parcel 2, 8.73 acres, $11\frac{1}{2}$ c a square foot or \$750 per acre, \$6,548.

Mr. Haas: Your Honor, I want to call attention to the fact that the green line here divides the cases.

Q. Referring next to the portion in pink numbered 3-A, the arrow pointing to that portion being 22417 on Exhibit C, I will ask you if you examined that property? A. Yes, sir.

(Testimony of E. B. Field.)

Q. In your opinion, what is the reasonable value of that portion No. 3-A?

A. 3-A contains 6.815 acres. I think it is worth $1\frac{1}{2}$ c a square foot or \$750 per acre, \$5,111.

Q. In the same case down to the right, along the right side, is the number 22147 with an arrow pointing into the parcel, and there is a parcel numbered in a circle 3-B, which extends from the boundary of an area marked "Granted to the California Drydock Company" down to a green line on the strip marked "15th Avenue." Have you examined the area represented by the portion colored in pink?

A. Yes, sir.

Q. As 3-B, and in your opinion what is the reasonable value of [47] that?

A. There are 27.1 acre. I consider it worth $1\frac{1}{2}$ c a square foot, \$750 per acres, or \$20,325.

Q. I now direct your attention to the largest apparently, the lowest group of pink strips, which has an arrow pointing to it in the lower part of the map marked 22261, representing Case No. 22261, one of the strips having a mark or a circle marked "2," that indicating it is Parcel No. 2 as described in Defendants' amended answer, and, of course, excluding the two yellow-colored blocks there, 3-A, 3-B, which are not at issue here, but limiting yourself to the portion, the strips colored in pink, I ask you, have you appraised that parcel?

A. Yes, sir.

Q. What did you find to be the reasonable market value of that parcel?

(Testimony of E. B. Field.)

A. I found 64.61 acres. I considered it worth 11½ cents per square foot, or \$750 per acre, totaling \$48,458.

Q. I ask you as of what date you set these various values? A. July 4, 1942.

Q. Did you allow the facts of the condemnation to affect your opinion of those values?

A. No, sir.

Mr. Haas: Your witness. Excuse me. May I interrupt? There seems to have been another.

Q. At that time you also appraised a parcel here unmarked at the corner of 4th Avenue, the strip marked "4th Avenue and D Street." What value did you set on that? That was, I believe, Parcel 3 in 22416. [48]

Mr. Healy: That one has been settled.

The Witness: That was eliminated by instructions, Mr. Haas.

Mr. Haas: That is right.

Cross-Examination

By Mr. Healy:

Q. You did not appraise that little piece there?

A. No, sir.

Q. Mr. Field, the figures you have just given us were as of July, 1942, did you say?

A. I may have picked the wrong date. I had a recollection it was April, was it not?

Q. I thought you said July?

A. I did say July.

(Testimony of E. B. Field.)

Q. Did you mean April?

A. I had the dates given me.

Q. Let us forget the month. Is it 1942 at any rate?

A. Yes, sir.

Q. Did you make this appraisal or investigation that led you to these conclusions as of 1942? Did you make your investigation back in the year 1942?

A. No, sir.

Q. When did you first start to contemplate upon the problems here involved and arrive at these calculations?

A. I think it was late in 1943. I may be wrong in that. When was the Hutchinson case? It was before that.

Q. The Hutchinson case was tried in January, 1944.

A. Then it was late in 1943.

Q. You were not a witness in that, were you?

A. I was prepared but not called. [49]

Q. In the course of your study of these maps and the problems involved you could observe that all this land was under about twenty feet of water or more, was it not?

A. Varying depths. That was the maximum.

Q. A maximum of 20 feet of water, and what was the minimum, Mr. Field?

A. The Coast and Geodetic Survey, as I recall, shows it runs from 10 to 20 feet generally.

Q. Approximately 10 to 20 feet under water and it has since been filled in by the United States Government in connection with the expansion at the Hunters Point Drydock, is that right?

A. Yes, sir.

(Testimony of E. B. Field.)

Q. Did you in your investigation and your study of this land come to any conclusion as to what the uplands were worth, the dry land?

A. No, sir.

Q. I do not mean far away, but I mean close by, just off the shore, let us say?

A. I made no appraisal of the property other than within the lines shown, the black lines shown.

Q. These areas that you have given us—let us take any one of these streets, like 16th Avenue. Do you know how wide that is, Mr. Field?

A. 60 feet.

Q. They are all 60 feet, aren't they, or approximately all of them, except the wider streets, like Waterfront Street?

A. Is that 60 or 66? I calculated them 60, I believe.

Q. Let us say 65 feet wide. [50]

This map, Mr. Haas, is an inch to a hundred feet, isn't it? Take, for instance, 17th Street. That would be a long narrow strip 40 inches, 4,000 feet long, by 60 feet wide.

Q. Is that right?

A. I have not scaled it.

Q. Mr. Haas stood here. It seems to be that, does it not? 40 inches. Each inch is a hundred feet. 4,000 feet. Let us just take 17th Street, Mr. Field, from C Street as far out as the waterfront there. That is an area about 60 feet wide and 4,000 feet long. Just take that segment. What utility would that have?

(Testimony of E. B. Field.)

A. Well, if I neglected to state as part of the whole, it was so obvious, that was the reason for neglect.

Q. Pardon me, sir?

A. If I neglected to state that my figures are based on the areas as part of the whole, it was so obvious I apologize for not so stating it.

Q. You know you need not apologize. I am just asking you if you will, sir, to consider one street, 17th Street, an area about 60 feet wide and about 4,000 feet long. Let us consider that and forget the rest for the moment, if you will, and tell us what utility it would have to anybody being out there, 10 feet to 20 feet under water?

Mr. Haas: Objected to.

The Witness: The use to which it is being put now.

Mr. Healy: I mean in that condition before it was filled in?

A. Are you asking me to say as a pipe line? [51]

Mr. Haas: Just a minute, Mr. Field. Objected to on the ground he has testified he appraised the parcels as a whole and not in small parts. You can cut a small piece off any piece of property and say, "What is that piece worth?"

Mr. Healy: I do not want to be unfair, but I think a little cross-examination should be permitted.

Mr. Haas: That is quite agreeable with the gentleman, but I think it should be revelant. The value of one single portion of those strips represents the same thing that was brought out in the Hutchin-

(Testimony of E. B. Field.)

son case. It is the value of the entire grid there, these various parcels, taking in cognizance the fact that they are all under State ownership and all of them have access around the edges, which gives them value.

The Court: I have done violence to this record already, so I can't do much harm. I will allow it subject to a motion to strike and over your objection.

Mr. Haas: Please note an exception.

Q. (By Mr. Healy): Will you answer the question? A. A parcel 60 feet wide——

Q. And about 4,000 feet long?

A. As part of the whole in the use to which it is being put now or any other uses? As part of the whole. If you are trying to get me to say a pipeline or a single wharf, I will say that.

Q. I do not want you to say anything you are reluctant to say. Just go back to 1942 when it was under water and before the [52] Government had filled it. That street alone there could be put to what utility?

A. As part of the whole, the use to which it was being put or——

Q. Let us look at that street, for instance.

The Court: It would be a good fishing pond.

The Witness: Or a dock or a pipeline. I took into consideration, Mr. Healy——

The Court: The acreage?

The Witness: Yes, sir. I took into consideration the many pieces sold, isolated, that was to be made part of the whole.

(Testimony of E. B. Field.)

Q. (By Mr. Healy): When you put them all together you have a checkerboard affair, as depicted on the map separate by these areas in white that belonged to various property owners?

A. I also took into consideration, Mr. Healy, the Hutchinson award of Block 207, I believe in court here, which was isolated, and the Newhouse award.

Q. That was upland, wasn't it?

A. Yes, just barely over the line, also isolated.

Q. I was not asking you what you took into consideration. All I asked you was about 17th Street, what utility it could be put to, and you told us. Now I will ask you the other question: What utility could all these long, narrow streets, fit for pipelines, be put to?

A. None whatever, except as I have explained before, part of the whole. [53]

Q. Well, if you put them all together as they there existed, could you put these strips in pink to any utility? Could you do anything with them then in 1942?

A. Well, they were put to use. They are in use today.

Q. The Government put them to some use when it filled them in, but as they then existed, before the United States Government filed these condemnation actions, could you put those pink strips to any useful purpose?

A. It is speculative. There have been such areas filled and in use.

(Testimony of E. B. Field.)

Q. It is speculative, though, is it not?

A. Yes.

Q. And that would be true, pointing to this area in pink in the lower portion of the map which is involved in Case 22261, the same answer would be with respect to the other two cases 22416 and 22417?

A. As part of the whole for the use or similar use to which they were being put, the value given.

Q. The value what?

A. The value given.

Q. The value given. I am just asking you about utility now, what you could do with them. It is still speculative, is it not, Mr. Field?

A. As single strips, yes.

Q. No, put them all together as they there existed. It is still speculative what you can do with them?

A. No, no, I think—it was speculative, as I understand, in the early days from Montgomery to the bay, but that property was put to use.

Q. Those were big pieces of land. I do not want to take too much of his Honor's time. I will ask a couple of questions and [54] if we can't get by, I will cease. I just want you to consider that area in pink there as it exists, not isolated, but the area as it exists, this pink strip, this one, this one and this one, and the cross streets, C Street and China Street; put them all together, assemble them as they there exist on the map: Can you tell us what utility they could have been put to in 1942?

A. As part of the whole.

(Testimony of E. B. Field.)

Q. I do not mean as part of these white strips. That is not part of the whole?

A. That is the reference to which I made constantly, as part of the blocks, yes.

Q. You mean as part of the whole including the white? A. That is right.

Q. But when you just have them in the pink portion there is no utility, is there?

A. Pardon me, Mr. Healey. I am not trying to argue, but they are put to use as part of the whole today.

Q. Today they are, but back in 1942. We are not talking about the white. We have paid the people for the white. I am talking about the pink as it there exists, the whole of the pink?

A. Not singly in my opinion, only as a part of the entire area.

Q. When you say the entire area, you mean the white? A. Yes, sir.

Q. And the white are the blocks. You understand, do you not, if that land were to have been filled in and raised up to above the water level, that these various people who back in 1868 and [55] the succeeding years purchased these blocks would have the right to those avenues as streets, public streets and avenues, do you not, sir?

Mr. Haas: Objected to as calling for the conclusion on a matter of law, which he is not qualified to give.

The Court: If he knows, he may answer.

(Testimony of E. B. Field.)

Mr. Haas: May we have an exception?

The Court: Note an exception.

Q. Do you know? A. No, sir.

Q. (By Mr. Healy): I am not asking you as a law question. I do not mean to traverse upon any law point or anything like that, but if they were filled up to above the level of the water—these lots; I am not talking about the streets—the lots have no utility whatsoever unless they have a street access; that is axiomatic, is it not, Mr. Field?

A. Yes.

Q. So in order for the lots to have any value at all these streets would have at least been permitted to be opened, isn't that so?

A. I doubt if there would be any filling for single blocks. It would be a large project, just as has taken place.

Q. I am sorry. I did not make myself clear. Let me repeat the question. I said if this area were filled in, in order for the white area, that is, the blocks, to have any utility, you would have to have streets down through them to permit access thereto, would you not? A. One street. [56]

Q. One street each. Well, in about the balance as it is depicted on the map, isn't that about it?

A. That I couldn't say.

Q. And that is a pretty fair plan, isn't it, in your experience as a real estate subdivider and in your experience for blocks—what are they, 200—

A. 200 by 600.

(Testimony of E. B. Field.)

Q. As a matter of fact, you really should have more street area, isn't that so? They do not make blocks now 200 by 600. They are generally smaller, aren't they?

A. It depends upon the terrain. No one can quarrel with the checkerboard supposition, if that is what you mean.

Q. That seems to be about right to have about that many streets in that many blocks, is that correct?

A. Yes, but may I explain my answer to you, Mr. Healy? I know of no case where a development of such expense would be justified to provide an industrial lot of 200 by 600. It would have to be as a whole. In other words, what you are saying, I presume, is a bulkhead where the fill is pumped in or you are bringing it in. I pictured the whole area as a large industrial or waterfront development, and that was in my opinion the only thing that would justify filling.

Q. My question is—I believe you have answered it, though—if it were raised by a fill-in, this block area as depicted in white would have no utility unless you had streets in about the [57] manner as depicted on the map, and I believe your answer was that that was correct?

A. That is right.

Q. When that would come, if that day ever did come, whatever value would be ascribed to the streets would be reflected in the value that a competent appraiser would put on the lots and blocks, isn't that so?

(Testimony of E. B. Field.)

A. I do not think I could picture that being filled in as a block subdivision. It seems too ridiculous to me I can't imagine how it would come about.

Q. I am just asking you this: Isn't it a fair statement, Mr. Field, that if this property were filled in—and it was filled in in many places along the waterfront, was it not, right here on Montgomery Street, as you said? A. That is right.

Q. Is the value at that date when the thing would be filled in, whatever value might be ascribed to the streets would be reflected in the enhanced value of the lots, isn't that so?

A. If that should come about I do not think there is any question of it, yes.

Q. That is so, is it not? A. Yes.

Q. And then the streets amount to about nothing or not more than a dollar, isn't that so?

A. No, are you talking about closing the streets?

Q. I am talking about value.

A. Streets for the general use of the public are certainly not salable and have no market value.

Mr. Healy: That is all.

The Court: We will take a recess.

(Recess.) [58]

The Court: I thought you gentlemen were through with this witness?

Mr. Healy: I have no further questions.

Redirect Examination

By Mr. Haas:

Q. Mr. Field, several times in your testimony,

(Testimony of E. B. Field.)

in answer to questions directed to you by Mr. Healy, you referred to values as speculative; just what do you mean by that term?

A. I mean that property was subject to large development, filling, backs brought in and other improvements for use in an industrial area, and I use "industrial area" as factory close to the center of the population, a good labor market, and attracts deep water which can be brought adjacent—like the old Union Iron Works plant, or Hunters Point, so the factors of cost were involved. So, if one large industrial area was made, it was speculative.

Q. You gave certain values in answering questions as to the reasonable market value. What do you mean by reasonable market value in that connection?

A. The value which, in my opinion, the property was worth, subject to the amount of money to be added to show the comparable use with other similar areas.

Q. Suppose this entire area had been reclaimed; what would you say the value would be?

A. In getting into such high values of land, then you would not take it with an overall average such as I have done.

Mr. Healy: Pardon me, I think that on direct examination [59] or redirect examination, that is not material. On direct we just did not have a situation of reclaimed land, so I object to the question as calling for the opinion of the witness on a condition which did not exist.

(Testimony of E. B. Field.)

Mr. Haas: On *direct* you can bring up any matter that was brought up on cross-examination.

The Court: I will allow it subject to a motion to strike.

The Witness: I think the waterfront property, itself, back up possibly eight or nine hundred feet, which would be \$40,000 an acre, or \$1 per square foot; and as it fades back, \$30,000 per acre, or 75 cents per square foot; further back, \$20,000 per acre, or about 50 cents per square foot.

Q. (By Mr. Haas): You refer to the Hutchinson property, which was the subject of one of the previous trials of this action. That is block 708, is it not? A. Yes, sir.

Q. Taking that as an isolated block as it is, what utility would that have? You will note, and may we have your scale, Mr. George?

Mr. Healey: We object to that question as being incompetent, irrelevant, and immaterial. On direct examination or redirect, it serves no useful purpose to go into that. That was not proper on direct or redirect. It may be proper on cross-examination, but I don't believe we asked about it.

Mr. Haas: That was the same proposition brought up when there was an attempt to take up the State's ownership on a [60] little piece, by taking out a little slice from the State.

The Court: I will overrule the objection subject to a motion to strike.

A. This place is 200 feet on Tevis Block, 285 and 1 inch on Thirteenth; 217 plus on Waterfront; 370 on Nineteenth Street. That is 65 square feet.

(Testimony of E. B. Field.)

Q. (By Mr. Haas): What utility would that have in connection with the surrounding property, or alone?

A. None, only as a part of the whole.

Q. United States Government, as I understand, settled for a fair amount for that place?

A. 3.7—

Mr. Healy: We object to that question and move to strike the answer.

The Court: It may go out.

Mr. Haas: That's all.

Recross-Examination

By Mr. Healy:

Q. Mr. Field, you spoke about large developments or developments of large areas for industrial purposes. It is a fact, is it not, that in the City and County of San Francisco, there are only three or four areas—withdraw that.

These areas here between the streets, being 200x600—that is about 125,000 square feet, is it not? A. Exactly.

Q. And 125,000 square feet is almost three acres? A. Almost three acres, yes, sir.

Q. So each one of those places would be about 3 acres? A. Yes. [61]

Q. How many industrial sites are there within the City and County of San Francisco of 3 acres or more?

A. There are a number of them—many—not available today, however.

(Testimony of E. B. Field.)

Q. But I mean in existence.

A. In use, many, many of them.

Q. Isn't it a fact there is something like less than half a dozen? A. In use?

Q. Yes.

A. In the City and County of San Francisco?

Q. Yes. A. Oh, no.

Q. You think there are more?

A. Many, many more.

Q. Three acres, now? A. That's right.

Mr. Healy: That's all.

The Court: Step down.

A. P. WALL

called as a witness on behalf of defendants; sworn.

The Clerk: Will you state your name?

A. A. P. Wall.

Direct Examination

By Mr. Haas:

Q. Mr. Wall, you were subpoenaed, were you not, to bring in all the records of the case numbered 43106?

A. The County Clerk was subpoenaed; I was sent down with the records.

Q. That is what you have handed me?

Mr. Healy: What are these, now, Counsel?

Mr. Haas: These are the records in the case of the People of the State of California in relation of the State [62] Board of Harbor Commissioners in the India Basin Case, which contained, on the basis,

(Testimony of A. P. Wall.)

from the private owners and others, a portion of these tide lands which are included in that map and concerning which the United States claims the State does not have title. That portion I will identify roughly on the map, because I expect by testimony to put it into the record, which is a portion of the tide lands which the State achieved in the same manner as it is out on the water, and concerning which there was litigation with the City and County of San Francisco as a part of the condemnation. Again, I wish to offer proof by Mr. George—no, I won't call it proof, but your Honor will take judicial notice of the effect of the records when they are in. The relevancy of the records is to bring out a portion of the tide lands included on this map and which the United States appears to contend were granted by certain Acts of 1872 to the City and County of San Francisco, that necessarily, in the condemnation by the State, and holding by the Court that the City and County of San Francisco was without title to the streets or the market place makes that question *res adjudicata*, at least, as to the City and County of San Francisco, and constitutes a construction of the granting act which throws further light on that act. I expect to bring all this up in the argument on the law.

The Court: What is the record date of the case?

Mr. Haas: The complaint was verified on the 29th of June, [63] 1912, long after any of these granting acts, and long before this litigation, so that it constitutes an excellent construction of the granting act.

(Testimony of A. P. Wall.)

The Court: For the purpose of the records, what is the purpose of this?

Mr. Haas: The purpose of this is to afford light on the construction of the statute, the two acts of 1872 which, claim has been made, granted these streets to the City and County of San Francisco.

The Court: For that limited purpose I will overrule the objection subject to motion to strike.

Mr. Healy: May I note an objection.

The Court: You may note an objection.

Mr. Healy: This is a complaint filed, Mr. Haas, in a Superior Court action?

Mr. Haas: It is not the complete file. It is all they have. We expect to supply the answer of the City and County of San Francisco. But, inasmuch as that disappeared, I would like to examine this man to develop that.

Mr. Healy: Before you do that, may I ask this preliminary question? Is that dealing with the land around the India Basin condemnation?

Mr. Haas: The actual property was condemned was the area from Islais Creek to India Basin, and from Waterfront Street to what was then First Avenue. [64]

Mr. Healy: Does it affect any of the land we are interested in in these three actions?

Mr. Haas: Vitally, inasmuch as it states they had in these three actions——

The Court: You limited that to the interpretation of the statute of 1872.

Mr. Healy: What I meant, is that it doesn't involve this same land, except by inference.

(Testimony of A. P. Wall.)

Mr. Haas: It is the contention of the State that all those portions included in the granting status are subject to the same construction, and it is just the old proposition, you have a deed that grants several parcels of land. The construction of that deed in connection with any one of the other parcels is a construction as to all.

Mr. Healy: Was the United States a party to those actions?

Mr. Haas: It was not.

Mr. Healy: We object to the introduction of those documents as being incompetent, irrelevant, and immaterial.

Mr. Haas: We contend the Federal Courts take judicial notice of the California law, that it is only because this is a court of record, a Superior Court action, that it is necessary that they be formally introduced, and they are the best evidence of the California law in this particular respect. [65]

The Court: I will allow them in subject to a motion to strike, and overrule the objection.

Mr. Healy: I think, your Honor, we should not overburden the record with these very old and voluminous documents.

Mr. Haas: I think we can probably stipulate, to shorten them somewhat after they are in, but I want to develop what part of the file is here.

The Court: Are you familiar with the file?

A. I am not familiar with the file except it is part of the original file, and it is all that is now available.

(Testimony of A. P. Wall.)

Mr. Haas: It is all that is now available of the original records of the County Clerk's Office.

The Court: What is absent, if you know?

A. I couldn't say. You would have to consult with Mr. Munson, who is the chief clerk.

Q. The fact that Mr. Munson is the chief clerk does not indicate to me that he knows any more about it than you do. This is a portion of the record. Let it go in.

(File marked Defendants' Exhibit G.)

Mr. Haas: I will have to ask the County Clerk to be here, unless it can be stipulated that this is all the records they have.

The Court: Was the County Clerk subpoenaed, do you know?

A. The subpoena is here, if the court please, directed to the Superior Court of the State of California in and for the City [66] and County of San Francisco.

The Court: Is the Clerk, himself, so important that he can't come?

A. It is customary to send one of the deputies, if the Court please.

The Court: In any event, the record is not here and it is only a portion of the record. This witness cannot give you any more information.

Mr. Haas: Possibly it can be stipulated. The only purpose of getting further testimony is——

The Court: I will accept the stipulation after you excuse this witness.

Mr. Haas: I will have to excuse him.

The Court: Between now and tomorrow morning, I would like to have you enter into whatever stipulation you can.

HAROLD E. GEORGE

recalled as a witness for defendant; previously sworn.

Direct Examination
(Resumed)

By Mr. Haas:

Q. I am recalling you, Mr. George, in connection with presenting certain facts in connection with this record which has just gone in. Mr. George, I have the complaint here in the action in which there is a description in Count II of that complaint,

“Commencing at the intersection of the waterfront line of September 12, 1877, with the southerly line of Islais Street, and extending southeasterly along [67] the said waterfront line to its intersection with the northerly line of India Street; thence westerly along said northerly line of India Street to its intersection with the southwesterly line of First Avenue South; thence northwesterly along said southwesterly line of First Avenue South to its intersection with the easterly line of Kentucky Street; thence northerly along said easterly line of Kentucky Street to its intersection with the southerly line of Islais Street; thence easterly along said line of Islais Street to the point

(Testimony of Harold E. George.)

of beginning, and containing all the blocks and parts of blocks and streets within the above-described boundaries.”

Did you locate that description on a map?

A. Yes, sir.

Q. What map?

A. I don't know. We have it here.

Q. Could you locate it now on the main map?

A. India Street is the street immediately north of the India basin. First Avenue runs diagonally, northwest from the corner of India Basin to Islais Creek Channel. Islais Street is a street immediately south of Channel. It runs, then, east to Waterfront Street, which approximately, very approximately parallels First Street and goes back into India Basin.

Q. Is that part of the property which the Tide Land Commissioners, by the Statute of 1868-9, were instructed to survey into lots and sell the lots?

A. Yes, sir, it was outside of what you would call the actual water line of the bay. [68]

The Court: What do you mean by the water line of the bay?

A. Where the water met the dry land, now known as mean high tide.

Q. (By Mr. Haas): Mr. George, during the noon hour I showed you and you read the case of *People vs. Williams*, heretofore mentioned by the Attorney for the United States. Can you identify the area involved in *People vs. Williams* on either

(Testimony of Harold E. George.)

or both of these maps, one being Defendant's Exhibit B and the other being Defendant's Exhibit D.

Mr. Healy: I object to that as calling for the legal conclusion and opinion of this witness. If you can point out some description here, bring it out that way.

Mr. Haas: Yes, all right.

Q. The first location there mentioned is Channel Street, between Fourth and Fifth Streets, in the City and County of San Francisco.

Mr. Healy: Where are you reading?

Mr. Haas: The opening lines of the opinion in *People vs. Williams*. This is Volume——

Mr. Healy: All right, I found it.

Mr. Haas: What page is it in the California Reports? I have the Pacific edition.

Mr. Healy: 498. It is 64 Cal. at page 498.

Q. (By Mr. Haas): "Channel Street between Fourth and Fifth Streets in the City and County of San Francisco." [69] Will you show his Honor where that is located on this map?

A. Channel Street is the street adjoining the canal which runs shoreward, you might say, from China Basin, and Fourth and Fifth Streets, I believe, are the same streets as they are in San Francisco today.

Mr. Haas: Let the record show the witness is pointing to Defendant's Exhibit B.

Q. How many blocks from China Basin on Exhibit B is Channel Street, between Fourth and Fifth Streets? A. One long block.

(Testimony of Harold E. George.)

Q. Now, I will ask that you point out to his Honor on this map, which is Defendants' Exhibit D, which contains portions of the railroad grant marked in yellow on the block where that same location of the block between Channel and Fourth and Fifth Streets is.

A. That would be the area right here, fronting, or between Block 17 and Block 52, and it being labeled as a market place.

Q. And that is with respect to those marked in yellow in what direction? A. It is northwest.

Q. And how close to them? A. Adjoining.

Q. Adjoining those blocks marked in yellow?

A. Yes.

Mr. Haas: That's all.

The relevancy of this testimony will be brought up in the argument on the law. The only point to be made there, your Honor, is that Channel Street Basin will be shown by the official map, and by the record of the Legislature, which [70] will be brought up in the course of the briefs, is not under the jurisdiction of the Board of Tide Land Commissioners, or never was subject to sale.

Mr. Healy: What was that?

Mr. Haas: Was never under the jurisdiction of the Board of Tide Land Commissioners, or never was subject to sale. That is the relevancy of that, because it may be brought up again in the briefs.

Mr. Healy: But it is included on this map.

Mr. Haas: But it is not part of the Tide Land Commissioners' jurisdiction. That is the theory

(Testimony of Harold E. George.)

of the State in this matter. We don't have to argue the law at this point.

The Court: Is that all from this witness?

Mr. Healy: I have just one question, your Honor.

The Court: Proceed.

Cross-Examination

By Mr. Healy:

Q. Counsel asked you to identify upon the map a description which, I believe, he read from the complaint in this case of the People of the State of California vs. Santa Fe Land Improvement Company, and you identified it for the court as this area between India and Kentucky and Channel and Waterfront. A. Yes.

Q. How far is the closest portion of that area to any of the land the State is claiming it is occupying in any one of these [71] three actions.

A. About a half a mile.

Q. About a half a mile?

A. About half a mile.

Mr. Healy: That's all.

Mr. Haas: The State's case will be complete except we still have to stipulate, or get the County Clerk to bring in the answer of the City and County of San Francisco in connection with this file. It is missing.

I have here a series of deeds from the Tide Land Commissioners to various owners, some certified copies of the record in the City and County of San

Francisco on appeal, dated prior to 1872, showing the actual form of conveyance by the Tide Land Commissioners to the lot and block owners. I would like to read them in as exhibits, or rather ask that they be deemed read into the record as exhibits.

The Court: What is the purpose of this offer?

Mr. Haas: The purpose of this offer is to show that the deeds made by the Tide Land Commissioners to the buyers of the lots all describe the lots and blocks by the interior boundary of the street up to the property line, and not to the center of the street.

Mr. Healy: We object to those on several grounds; one, I think that counsel only has three or four here.

Mr. Haas: I think there are about a dozen; three or four in each group.

Mr. Healy: All right, a dozen. We don't know, first [72] of all, if he takes a dozen original deeds to a dozen of these lots what the situation would be as to the remainder, because there are hundreds of them, I take it. Secondly, and most important, it doesn't make any difference what the form of the deed is, because the Act of 1868 that I already called to your Honor's attention, and which I read a portion of, provided that the Tide Land Commissioners were to sell them by lots. If the Tide Land Commissioners fell down in their duty in any way—I am not saying that they did—but I say if they did, there would be read into the deeds, by operation of law, the full benefits and provisions of the

statute behind it. That is the law of the State. I cite to your Honor many cases, but just taking one case——

The Court: I think counsel will agree with you.

Mr. Healy: It is read into it.

The Court: Yes.

Mr. Healy: It is part of the law. The disposition of State lands is one entirely of legislative control and the law enters into and becomes part of the contract with the State. So, aside from these deeds, we must look at the statute which authorizes the Tide Land Commissioners to sell and dispose of land, and to sell and dispose of the land in a certain manner, and under the law a public officer is presumed to have done his duty, sold and disposed of the land by lots and blocks, and having sold [73] and disposed of the land by lots and blocks, the streets to go with it.

The Court: I am prepared to rule, gentlemen. I will allow them to go in subject to a motion to strike, and the record will note your exceptions so that the Circuit Court may know where they are and all about them.

Mr. Haas: For the record, I want to point out——

Mr. Healy: They are entered now.

Mr. Haas: I understand that, but the only evidence in is that the State was the original owner, and even in bringing these in, we have stipulated the blocks excluded the streets; that is, we have not stipulated on the streets being granted out. So far, there is no presumption that even the blocks

have been granted. These are being put in to clear the atmosphere.

The Court: Everything you have put in so far is so remote I have difficulty in following you.

Mr. Haas: I think in the briefs we will be able to make that clear.

The Court: I will give you every opportunity.

Mr. Haas: I suggest we give this an exhibit letter. First will be Exhibit H, and then H-1, and so forth.

The first is a certified copy of the Tide Land Commissioner deed dated September 20, 1869, identified as No. 1325, relating to a lot in 22416. [74]

(The deed was marked Defendants' Exhibit H.)

Mr. Haas: The next is also in the case 22416, and is a certified copy of a deed to lots 11, 12, 17, 18, of Block 34.

(The deed was marked Defendants' Exhibit H-1.)

Mr. Haas: In case 22147, the next is a certified copy of a deed dated September 17, 1869, identified as 1317, conveying lots 10 to 19 of Block 1711.

(The deed was marked Defendants' Exhibit H-2.)

Mr. Haas: Also in case No. 22147, the next is a certified copy of a deed dated September 17, 1869, No. 1287, conveying lots 1 to 5 and 24 in Block 711.

(The deed was marked Defendants' Exhibit H-3.)

Mr. Haas: Now, also, a certified copy of deed dated January 5, 1871, identified as New Series 140, relating to title to lots 1 to 5 inclusive, and lot 24 in block 711.

(The deed was marked Defendants' Exhibit H-4.)

Mr. Haas: In case No. 22147, a deed dated September 17, 1869, identified as No. 1268, relating to lots 8 and 15 of block 35.

(The deed was marked Defendants' Exhibit H-5.)

Mr. Haas: Also, in case 22147, a certified copy of deed dated September 17, 1869, identified as 1269, relating to lots 9 and 14 in block 35.

(The deed was marked Defendants' Exhibit H-6.) [75]

Mr. Haas: Also, certified copy of record of deed relating to lots 10 and 19 in block 711, Nathaniel Holland, being the grantee.

(The document was marked Defendants' Exhibit H-7.)

Mr. Haas: Also, in case No. 22261, certified copy of deed to 24 lots numbered 1 to 24, inclusive, at block 765, the grantee being William H. Hencken.

(The document was marked Defendants' Exhibit H-8.)

Mr. Haas: Also certified copy of deed dated September 15, 1869—withdraw that.

Also, certified copy of deed to lots 1 to 8 inclusive, from 21 to 24, inclusive, in block 764. This is case No. 22261, and the grantee is Edward Schwerin, and Henry Schwerin.

(The document was marked Defendants' Exhibit H-9.)

Also, in case No. 22261, certified copy of deed, lots 21 to 24, inclusive, in block 713, the grantee being Matthias Jessin.

(The document was marked Defendants' Exhibit H-10.)

Mr. Haas: Also in case 22261, certified copy of deed for block 358, lots 1 to 8, and 21 to 24, inclusive, the grantee being John Appel.

(The document was marked Defendants' Exhibit H-11.)

Mr. Haas: Also, in case 22261, grant of block 732, the grantee being H. P. Jones.

(The document was marked Defendants' Exhibit H-12.) [76]

Mr. Haas: Also, for the record, I call the court's attention that these are all deeds from the Tide Land Commissioners to the original grantees and show the form of deed made by the Tide Land Commissioners.

The Court: Indicate again for the purpose of the record the purpose of this offer.

Mr. Haas: The purpose of this offer is to show that the conveyances of the blocks and lots by the

Tide Land Commission, all describing the properties conveyed by the boundaries of the street closest to the lot, did not purport, at least, to convey to the center of the street.

There are twelve deeds which, for the purpose here offered, ranging from one or two up to three or four in each of the cases. We offer them as showing the form used by the Commission in those cases, and rest on the presumption that offer is regularly performed and *the* course of business is here shown by the form of these deeds, the performance being in the absence of other proof, similar blocks were in similar form.

The Court: What relation has that to the issues here involved?

Mr. Haas: The question of the ownership of the streets—well, not the ownership of the streets, but of the strip areas reserved originally for streets.

Mr. Healy: May I ask a question? Some of these deeds [77] are typewritten in form, and some of them are obviously photostats of the original. Are the typewritten ones copies taken off of the recorder's records?

Mr. Haas: Yes, this was a rather painful search. Some were taken from the records and are photostatic copies certified by the Recorder of the records in his office showing the original grant of the Tide Land Commission as to these boundaries. And others were in the possession of the State. When the lot owner could not pay up, or under other contingencies the deeds were turned in to the State Treasurer for cancellation, and the result was that

there were some bales of these deeds in the State Treasurer's office, among the clerical offices of the State Land Division, who ran down a few, such as they could, showing the forms. That is why some are photostats and some are originals.

Mr. Healy: That is, these that are typewritten and which, as I suggested, and you agreed, are apparently taken off of the County Recorder's records, and dated 1907, which is after the fire. I was informed all the records over there were burned so you could not get any of the records as of that time.

Mr. Haas: That is correct. These, however, will be shown to be a re-recording of an original deed in each case.

Mr. Healy: One reads, "A true copy of the original, recorded at the request of Charles Parnell, 1907." [78]

Mr. Haas: These are copies of the originals and brought in and recorded after 1907, but are copies of the original deeds.

The Court: Keeping in mind the condition existing at that time, that is the only thing that could have been done.

Mr. Healy: Are each of these deeds the same in form, as far as you know?

Mr. Haas: Yes, as to the description in each case, being metes and bounds descriptions, going to the center line of the streets.

The Court: Mr. Wall, you may get some idea from your chief about this.

Mr. Wall: I did not, myself, make a personal search for these records.

The Court: Maybe you can get a stipulation from the Government.

Mr. Haas: I think we can. All we want to do is introduce a copy of the answer of the City and County of San Francisco. We want to do that in order to show that the issue is litigated.

Mr. Healy: Do you have a copy?

Mr. Haas: I have a copy taken from the City Attorney's records.

The Court: Well, in any event, it is time for adjournment. We will have this expert from the City Hall here tomorrow, who [79] will assist us.

We will adjourn until 10:00 o'clock tomorrow morning.

(An adjournment was taken until tomorrow, Wednesday, June 26, 1946, at 10:00 o'clock a.m.)

Certificate of Reporter

I, Joseph J. Sweeney, Official Reporter, certify that of the foregoing, 22 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to type-writing, to the best of my ability.

/s/ JOSEPH J. SWEENEY.

Certificate of Reporter

I, Fred J. Sherry, Jr., Official Reporter, certify that of the foregoing, 57 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to type-writing, to the best of my ability.

/s/ FRED J. SHERRY, JR.

Wednesday, June 26, 1946, 10:00 o'Clock A.M.

The Clerk: United States of America vs. Land in the City and County of San Francisco.

Mr. Haas: After our disappointment with the Deputy County Clerk last night, your Honor, Mr. Healy has kindly stipulated that this may be made a part of the file which was submitted with like effect as if it were an original. This is the answer of the City and County of San Francisco.

The Court: It will be admitted and marked next in order.

Mr. Healy: We would like to urge the same objection to this document that we did to the balance of the file. We make no objection that it is not the original, because Counsel has assured us that it is a copy of the original that was filed, but we would like to object to it on the ground that it is incompetent, irrelevant and immaterial, as we did to the balance of the file.

The Court: Let the record show an objection. It will be overruled. I will allow it in subject to the motion of Counsel to strike.

Mr. Healy: Is that all?

Mr. Haas: That is all. We rest subject to rebuttal.

Defendant rests.

Mr. Healy: May it please your Honor, at this time, since the State has rested, I feel it my duty to move the Court for [80] an order dismissing the claim of the State as set up in their answer, in that there is a total failure on their part to prove that

they had any interest in the land in question. I can argue that more extensively, but I think we discussed it as we went along yesterday and the Court probably has our views in mind, that although they owned the lots in 1850 when the State of California became a sovereign state, by the statute of 1868, the Board of Tideland Commissioners was granted the authority to sell, to first survey and then to make a map and to sell by lots, and they have divested themselves of all title in and to the lots, and I therefore urge upon your Honor at this time to make an order dismissing their claim as set up in their answer in that there is no evidence showing or tending to show whatsoever that they have any compensable interest in or to the land involved in these actions.

The Court: For the purpose of the record the motion will be denied.

Mr. Healy: Then may we proceed with our proof?

The Court: Yes.

Mr. Healy: And our proof, may I say, will consist of the testimony of two witnesses as to value.

JOSEPH J. PHILLIPS

called on behalf of the plaintiff; sworn. [81]

Direct Examination

By Mr. Healy:

Q. Would you state your name, please?

A. Joseph A. Phillips.

(Testimony of Joseph J. Phillips.)

Q. Mr. Phillips, what is your business or occupation?

A. Director of Property for the City and County of San Francisco.

Q. How long have you held that position?

A. Since January 8, 1932, and prior to that time I was Chief Right of Way Agent for the City from 1915. Before 1915 I was an appraiser on building construction and lands for various projects acquired by the City.

Q. As Property Director of the City and County of San Francisco, do you have occasion to buy and to sell property in your official capacity?

A. I do.

Q. Just very roughly, if you can, tell the Court about how much property you have purchased for the City and County?

A. In excess of one hundred million dollars.

Q. You have been in that position since 1932, you say?

A. As Director of Property, but I bought property for the City prior to that, from 1912 on.

Q. Have you had occasion to make appraisals for private organizations, banks, trust companies, railroad companies and the like?

A. I have always made it a point only to appraise for governmental agencies. I have done a great deal [82] of appraisal work for cities, municipalities, state and federal government.

Q. Did you have any experience in organizing the East Bay Municipal Utility District?

(Testimony of Joseph J. Phillips.)

A. Yes, I organized the Right of Way Department of the East Bay Municipal Utility District and furnished them with one of my men, who took charge of the work there and handled it for them.

Q. Are you familiar, generally speaking,—generally first—with land values, values of real property in and about the City and County of San Francisco? A. I believe that I am.

Q. Are you familiar with the territory that we generally speak of as the Hunters Point Region?

A. Very familiar with it.

Q. Have you made any particular studies of that area and, if so, tell us briefly to what extent?

A. I have purchased several parcels for the City in that south basin. In addition to that, in 1939, I appraised the drydock, which was purchased by the Government, I understand, on my figure. After that for the Federal Government I made quite a number of appraisals, one on April 25, 1942, and another one in July of 1942, which embraces all of the land now here in question—April 8, 1942, and July 25, 1942.

Q. Are you familiar with this map we have here on the board, the map of salt marsh and tide lands? A. I am.

Q. Have you also familiarized yourself with the segment of it that has been enlarged and produced here by the State? [83] A. I am.

Q. Discussing this with his Honor, would it be easier for you to point to the large one or the regular one?

(Testimony of Joseph J. Phillips.)

A. It doesn't make any difference, whichever his Honor desires.

Q. You did make an appraisal for the United States Government in 1942 of the land in question, didn't you? A. That is correct.

Q. Did you make more than one appraisal, there being three cases here?

A. Yes, I made five or six appraisals, maybe more, taking in the entire area reaching over to the Southern Pacific Railroad.

Q. You were in court yesterday?

A. Yes, sir.

Q. And you heard the discussion, so you are generally familiar with this. Withdraw that. You are familiar with this enlarged map? A. Yes, sir.

Q. I suppose in your appraisal you appraised the areas within the blocks, too? A. I did.

Q. And the bulkhead areas and the other areas, market areas, and so forth, which we are not concerned with; we are just concerned with the areas in pink. Just take a look up here at what is denominated on this exhibit, Defendants' C, this area that is denominated in Action 22416 as Parcel 3-A. What in your opinion is the value of that area?

A. One dollar.

Q. And depicted there in pink?

A. One dollar.

Q. What about this one immediately to the north of it? I will [84] withdraw that. I gave you the wrong number. That is in Action 22147. What is your opinion as to that? A. One dollar.

(Testimony of Joseph J. Phillips.)

Q. How about this parcel No. 2 in Action 22416?

A. One dollar.

Q. How about this other area further to the southeast in Action 22147, which is depicted as—just a moment. Do you call this 3-B or 2, Counsel?

Mr. Haas: This is 3-B of 22147; at this point it becomes 2 of 22261.

Q. (By Mr. Healy): This area 3-B of 22147?

A. One dollar.

Q. And this one, 2, of 22261?

A. One dollar.

Q. Now, you have given his Honor your opinion as to the value of those areas. Will you be good enough to explain to his Honor some of the reasons that entered into that opinion that you just gave?

Mr. Haas: That is objected to on the ground that the statement of reasons must, I believe, be on a specified basis.

Mr. Healy: We have been doing it for as many years as I can remember in this court. The expert is entitled to give the reasons for his opinion.

Mr. Haas: Objection withdrawn.

Mr. Healy: Would you answer the question?

A. Originally land is purchased in large acreages, and when there is demand on the part of the public for the purchase of that land, it is naturally subdivided. The subdivider lays out those tracts into what he believes is the best size lot and [85] block for the particular need at that time. He files a map showing streets, so that access can be obtained to all of these blocks which he disposes of,

(Testimony of Joseph J. Phillips.)

and as a result of that, the value that was in the area taken by the streets is absorbed by the land that is sold plus an additional value to that land. If there was not an additional value there would be no object in the man subdividing it, because he could just as well sell it off in acreage, so the appraiser must take the position, and it is borne out by the facts, that the value of the street is absorbed into the value of the property sold plus an additional value.

Mr. Haas: Objected to as not responsive. There is nowhere in the evidence so far any showing that these strips are streets.

The Court: The objection is overruled. I will allow the question and answer to stand.

Mr. Haas: Exception, your Honor.

The Court: Note an exception.

Q. (By Mr. Healy): I believe I asked you this, but just so I fill in any technicality, these figures of a dollar each for these four parcels that you gave to us, those are your opinion as to the fair market value of those areas, is that right? I did not ask you as to the fair market value. Is that right?

A. They are, for this reason, that an appraiser going out to make an appraisal of a tract finds out the lots have been sold [86] either by metes and bounds or by lot and block number. It wouldn't make any difference in his mind what the metes and bounds description of lots are described as fronting on the street. He then investigates and finds in this particular case that the map was filed

(Testimony of Joseph J. Phillips.)

in the office of the Tide Land Commissioners, and that map was also filed in the office of the State Surveyor. He also finds that the streets have been accepted on all official maps of the City of San Francisco, and he cannot figure at a later date that a subdivider would come along and say, "Well, I sold you that lot purportedly on a street, but I didn't sell you the fee of the street," because if he were to sell that fee of the street, he is going to depreciate the value of the other property far more than the value of the street.

Q. Explain that last point in just a little more detail. Do you want to step down here?

A. No. That is all right. I can talk over here. It doesn't make any difference to the appraiser whether the lots are sold by metes and bounds or by lot and block number. The average appraiser believes if it is sold by lot and block there is no question but what the title comes to the center of the street, and if it is sold by metes and bounds it only goes to those metes and bounds. But a description of the metes and bounds describes that lot as fronting on some particular street, and with the filed maps carrying that out, we must suppose that those streets are designated as public streets and that they cannot be taken away from that [87] owner without suffering him a great deal of damage, and for that reason you cannot put any value on a street, no more than the nominal sum of a dollar.

(Testimony of Joseph J. Phillips.)

Mr. Haas: Again objected to, your Honor, for the same reason, non-responsive, and no proof shown that there are any streets here involved.

The Court: This witness is called as an expert as to value. I will allow the answer to stand.

Mr. Haas: Exception, your Honor.

The Court: Note an exception.

Q. (By Mr. Healy): Just one more question, one more subject, at any rate.

Are you familiar, Mr. Phillips, with the approximate number of large industrial sites that are now existent in the City and County of San Francisco and their approximate areas?

A. I am. Naturally in my position I have made a study of this over a great period of years and I have found that originally a great number of years ago, outside of the Hunters Drydock site there were only four large industrial areas, the Western Sugar Refining was about twenty-five——

Q. 25 acres?

A. 25 acres, the Pacific Gas and Electric Company, about twenty, the United States Government, Columbia Steel, about thirty, and the Bethlehem Steel about twelve. Those four and the Hunters Point Drydock itself were the only four large industrial sites purchased in San Francisco, [88] and a study of the ideal industrial site is approximately 3.67 acres. That is considered the ideal. Now, there are one or two exceptions, as there are always in these cases.

Q. (By Mr. Haas): How many acres?

(Testimony of Joseph J. Phillips.)

A. 3.67 acres is considered by all the experts with whom I discussed the matter, and from my own study—about 400 by 400, which equals 3.67 acres—is the ideal industrial site in San Francisco. There are one or two exceptions to that, and there are very few. Within the last few years the American Smelting and Refining Company assembled a large piece of property on Evans Avenue near Army that contained a little less than seven and a half. The Safeway also acquired from the Western Pacific a very large warehouse site, a storage site which was a little less than eight acres. With those two exceptions, practically all of the industrial sites in San Francisco would run from two, two and a half, up to four acres.

Mr. Healy: That is all. You may cross-examine.

Cross-Examination

By Mr. Haas:

Q. Mr. Phillips, you stated that you have appraised, made a point of appraising only for Government agencies, is that correct?

A. That is correct.

Q. Your appraisals have been, normally speaking, for the purpose of setting a value for acquisition purposes by the Government agencies?

A. Not always.

Q. Have you ever appraised for the purpose of sale by the [89] Government agency? A. Yes.

Q. In what cases, to your memory?

(Testimony of Joseph J. Phillips.)

A. Well, for instance, it is an every day occurrence with me. I am selling probably a million dollars of property this year, and I am appraising those pieces, and they cannot be sold unless it is at least ninety per cent of my appraisal. I am doing that almost every week. I have about ten or twelve of those—I have held, I guess, twenty sales already since the first of January.

Q. You are setting a sale price for property owned by the City?

A. Yes, that is correct.

Q. For how long have you been doing that?

A. Twenty or thirty years.

Q. You have testified that Parcel 3-A—perhaps I had better point them out—in Action 22147, Parcel 2 in Action 22416, Parcel 3-B in Action 22147, and Parcel 2 in Action 22261 are in your opinion each respectively of the value of one dollar, is that right?

A. Correct.

Q. And you have based that testimony, have you not, upon the theory that these parcels are streets, have you not?

A. Yes, sir, that they are streets——

Q. That is all. You have answered.

A. ——that they are streets furnishing access to the property sold by the Tide Land Commissioners.

Q. Would your opinion be the same if these parcels are not streets?

A. If I could see no complications in [90] the title it would be different, but where——

(Testimony of Joseph J. Phillips.)

Q. That is all, I think. Let us put it the other way.

Mr. Healy: Counsel, may I speak to his Honor for a moment?

Mr. Haas: Excuse me.

Mr. Healy: I would submit to your Honor that the gentleman on the stand should be permitted to finish his explanation.

The Court: Let him finish his answer.

Mr. Haas: Just a moment, your Honor, the rest of the answer was not responsive. That is why I cut it off.

The Court: You must wait until he concludes and move to strike.

Mr. Haas: I accept the rebuke and apologize.

Mr. Healy: You were about to explain something?

The Witness: I was about to explain in this particular case, with the knowledge that I have from the beginning of it, I cannot get away from the idea that no matter what quirk of the law there is, with respect to the title to the streets not having been passed, I certainly would not consider that a subdivider would have any right to sell off those blocks and fool the public by telling him he can't get to his lots. I can't get away from that in this case.

Q. You feel yourself unable to form an opinion as to their value if these were not streets?

A. I didn't say that. I said I cannot get away from the idea that these streets are [91] necessary.

(Testimony of Joseph J. Phillips.)

No matter how the title is held, the strips are necessary to furnish access, which was practically guaranteed by the subdivider when he sold that to the public.

Q. (By Mr. Haas): Suppose we examine that statement. Why do you feel that it is inevitable that these particular parcels, these particular portions of the parcel here colored in pink on this Defendants' Exhibit C, must be the strips that will be used for access?

A. I know that of my own knowledge. I know that these lots were sold by the Tide Land Commissioners with the description that they were on certain streets, and the descriptions so read. I cannot get away from that fact.

Q. I am in complete agreement with you, but what I am asking now is, if they are not actually streets, does your opinion of the value continue to be that they are worth a dollar?

A. Under the circumstances, as long as they are strips that are necessary for access to the property sold by the original subdivider, I would consider them only of a nominal value.

Q. That is with knowledge of the fact that it is perfectly possible that they might not be used for access, that they are not necessarily at a given time subject to such use?

Mr. Healy: Wait just a minute. I do not understand that question.

(Question read.)

(Testimony of Joseph J. Phillips.)

Mr. Haas: I think I will withdraw that question and put it this way: [92]

Q. Would it be true, Mr. Phillips, that your entire opinion of value is based on the theory that the lot owner may use these pink strips, strips colored in pink, in the various parcels on this Defendants' Exhibit C as streets, as a right to do it?

A. Well, I know as a matter of fact that he has a right to access. Whether you call them streets or not, he has the right to access over those strips.

Q. And your opinion is based solely upon that. If that were not true, that would not be your opinion, is that right?

A. My opinion is based on the fact that if through some quirk of the law the deed to those strips was in another party, then the original lot owners had been gypped by the subdivider, or else they would have a damage action against somebody for taking away their access.

Mr. Haas: I will ask the witness' answer be stricken as not responsive and that he be directed to answer the question.

The Court: Read the question.

(Question read.)

The Court: If you do not understand the question, say so.

The Witness: I thought I had answered it.

The Court: It is not a satisfactory answer to Counsel.

The Witness: Would you read the question again, please?

(Testimony of Joseph J. Phillips.)

The Court: I suggest that you reframe the question.

Mr. Haas: I should like to have it read.

(Question reread.) [93]

A. Well, I would say that the value of these pink strips would be nominal in any case, because they are not practical to be used. You could not use a strip that is either 64 or 80 feet in width, of the great length that these would be, unless you could combine them with the adjoining property, and the only value that they would have would be in combination with the adjoining property to furnish access to it.

Q. (By Mr. Haas): But with such a combination they would have definite value?

A. Yes, if the tract was laid out and you sold the streets first and then sold the white lot numbers afterwards, then they would have a value, if it had happened in that way.

Q. So that actually your value of one dollar is based, then, upon the fact that these are streets, isn't it?

A. Yes and no. I think I have covered both sides of it. I have placed in streets, and my last answer stated they would have no practical value if the streets had been sold first and then the rest of the property had been sold without any access in any way; the value would have been very low, and those owners, knowing that they had to buy this pink strip from this first purchaser, of course,

(Testimony of Joseph J. Phillips.)

they would have a value then, but that is the only way they would have it, and they would not have it otherwise.

Q. You stated that 3.67 acres was the ideal industrial site in San Francisco. Would you say that any one of these small blocks individually would be worthy of reclamation by itself? [94]

A. No, sir, it would not.

Q. Its value would be in connection with the reclamation only as part of the general plan?

A. No, that is not correct. Over the period of years, if you will search the titles, you will find there have been a great many transfers from time to time. It has had a certain market value. Whether the people in buying it figured it would pay them to hold it until such time as it was reclaimed, I don't know, but it has a market value as it stands today, not reclaimed, and it is sold on the general market and transferred many times without being reclaimed.

Q. But for the purpose—let us put it again—so far as any one of those individual blocks is concerned, would it have value alone for the purpose of reclamation as an industrial site?

A. Well, I have already stated that the only way to bring this property into the market would be to reclaim it as a whole.

Mr. Haas: That is all.

Mr. Healy: That is all, Mr. Phillips. Thank you.

GEORGE H. THOMAS, JR.

called on behalf of the plaintiff; sworn.

The Court: Your full name?

A. George H. Thomas, Jr.

The Court: Proceed. [95]

Direct Examination

By Mr. Healy:

Q. Mr. Thomas, what is your business or occupation?

A. Real estate broker and appraiser.

Q. Are you connected with any particular firm in San Francisco?

A. Yes, I am connected with Baldwin and Howell in the capacity of vice-president in charge of valuations.

Q. Baldwin and Howell have been in the real estate business in San Francisco since approximately when? A. 1885.

Q. And you have been connected with that firm about how long?

A. A little over twenty years.

Q. Have you had any experience, Mr. Thomas, in evaluating or appraising real property in and about the Bay region? A. I have.

Q. Just briefly tell his Honor some of your experiences?

A. I have been employed by the United States of America, the Navy Department, the Department of Justice, the War Department, the Maritime Commission, Federal Public Housing and other agen-

(Testimony of George H. Thomas, Jr.)

cies; employed by the State of California, the Division of Highways, the Toll Bridge Authority, Superintendent of Banks, Director of Finance, the Insurance Commissioner, Building and Loan Commissioner; I have been employed by the City and County of San Francisco; I have been employed by the Crocker First National Bank, the American Trust, the Bank of America, the Wells Fargo Bank, the Anglo-London-Paris National Bank, and several insurance companies. And I have appraised in excess of [96] \$250,000,000 worth of real estate in the last fifteen years.

Q. You are familiar, I take it, from the experiences you have had, with real property values in and about San Francisco and the Bay region, are you not? A. Yes.

Q. Did you have occasion at the request of the United States Government in the year 1942 to investigate and to make an appraisal of certain property that was later acquired by condemnation in these three actions now pending? A. I did.

Q. You have seen this exhibit which is on the board, these two exhibits introduced here by the defendant, the State of California?

A. Yes, sir.

Q. And you are familiar with those maps, are you not? A. Yes, sir.

Q. The areas depicted in pink are the subject matter of this litigation or this trial, I should say. I will give these parcels by numbers so we will have a clear record. In this Action 22416, with

(Testimony of George H. Thomas, Jr.)

respect to this area in pink that I am pointing to, which is known and designated as Parcel 2 in the State's answer, what in your opinion was the market value, the fair market value of that parcel in the year 1942?

A. The nominal value of one dollar, the value being reflected in the abutting properties.

Q. What in your opinion is the fair market value of this parcel immediately to the south, Parcel 3-A of Action 22147? A. One dollar. [97]

Q. Turn your attention here, please, to this Parcel 3-B of Action 22147. What in your opinion was the fair market of that parcel in the year 1942 at the time of its taking?

A. The nominal value of one dollar, due to the value being reflected in the abutting property.

Q. And this parcel, designated Parcel 2 in the State's answer in Action No. 22261, what in your opinion was the fair market value of that parcel?

A. The nominal value of one dollar, due to the fact that the value is reflected in the abutting property.

Q. Now, you have given your conclusions to his Honor. Will you kindly state some of the reasons that go into the conclusions you have just expressed?

A. I appraise the property as a subdivided property. I have made a complete analysis of the many sales that have been made of the properties abutting the properties in question, the subject property, and have consequently reflected the value of the

(Testimony of George H. Thomas, Jr.)

property, the value of the roadways, streets, strips, or whatever you choose to call them is reflected in the abutting property, and the organization that I am associated with, we have put on many subdivisions and bought property in acreage and sold it and subdivided it, and, consequently, the subdividing, with access for ingress and egress, the value has been reflected in the properties we have sold the same as the subject property here. If that property was appraised before it was subdivided, appraised regardless [98] of the map that had been filed, as just acreage, it would have an entirely different value, but the property was appraised as being owned by several property owners.

Q. You mean the blocks now?

A. The blocks. Consequently they paid for the streets that were supposed to exist as shown on that map, and the benefit of those streets was reflected in the properties that were acquired. If that was not laid out as a street, it was not a subdivision, if it was appraised as an entire, just acreage, it would have an entirely different value. We figured that the value would be about one-fifth of what it was as a subdivided property, so that if the title was vested in one ownership as a whole, it would be appraised for a whole lot less than it was appraised as a subdivided property by me.

Q. With respect to this fraction of one-fifth, you mean if it were just a bulk, not subdivided or cut up or not divided in any fashion but in one

(Testimony of George H. Thomas, Jr.)

ownership, it would be worth approximately one-fifth of what it would be when laid out in different ownerships in lots and blocks?

A. That is right.

Q. Generally considered as more or less a standard quotient or factor?

A. Yes. If a property is worth \$800 an acre subdivided, it might have a market value not subdivided of \$100 or \$150 an acre.

Q. Mr. Thomas, just generally speaking now—will you take any block—I do not mean here, but any place in the country that [99] does not have any access to it—will you state whether it has any value?

A. No, it would have a nominal value if it did not have any access, if it was eliminated from access, if you put a barrier in front of Seventh Street and couldn't get into this property.

Q. It is of practically no value. I am speaking now of any place. When a road or a street is laid out affording access to our given block, then it takes a value; it takes on value, does it not?

A. The property takes the value. The value of the street is reflected in the value of the property.

Q. And the area that is now being used for access, whatever value that has, is reflected over into the value of the——

A. Abutting property.

Q. And that is afforded the property given the access, is that correct?

A. That is correct.

(Testimony of George H. Thomas, Jr.)

Q. That is true of practically any place one can go, isn't that so?

A. It has been my experience, and I have appraised all the property acquired at Hunters Point, not only the submerged, but the upland that was used, which were many thousands of parcels, and all the streets were allowed a nominal value of one dollar, and that runs from Evans south to the County line and from Third Street including the waterfront.

Q. I omitted to ask you, but you somewhat implied it. Did you appraise the value of these blocks in here, too, as well as the pink areas? You appraised the whole thing? [100]

A. I appraised the entire project.

Mr. Healy: You may cross-examine.

The Court: We will take a brief recess.

(Recess.)

The Court: Proceed.

Mr. Healy: We have no further questions. You may cross-examine.

Cross-Examination

By Mr. Haas:

Q. Mr. Thomas, you have testified as to the values of the various parcels, assigning the following parcels, as shown on Defendants' Exhibit C and marked in pink thereon the value of one dollar each: Parcel 2 in Case 22416, Parcel 3-A in Case 22147, Parcel 3-B in Case 22147 and Parcel 2 in

(Testimony of George H. Thomas, Jr.)

Case 22261, stating that this was a nominal value, that the value was reflected in the abutting property in your appraisal, is that correct?

A. Yes, sir.

Q. If that value were not reflected in the abutting property, would you still be of the opinion that the strips so marked in pink had a purely nominal value?

A. Yes, sir.

Q. Even if the value of the strip was not reflected in the abutting property?

A. As the property is laid out on the map, with the different ownerships abutting on the strips.

Q. Assuming that the strips have attached to them solely the value in themselves, that none of this value is to be reflected in the abutting property, looking at this purely as a series of [101] ownerships, this block owned by one party, this grid owned by another—the grid in pink—for purposes of sale, the reasonable market value, wouldn't the grid as such actually have a higher value than the blocks enclosed?

A. No, not in my opinion.

Q. Although these enclosed ones would have, as you put it, no access?

A. I appraised it as I understood it to be, as subdivided property with all the different ownerships. Now, as that condition existed in my mind, upon investigation, those were streets, strips, roadways, or whatever you might choose to call them.

Q. In other words, your appraisal is based on the theory that those were actually streets?

A. Absolutely, yes.

(Testimony of George H. Thomas, Jr.)

Q. And if they were not streets, that appraisal would not be affected, then?

A. If they were not, if it was all acreage, and it was in one ownership, my value would be one-fifth of what it was as it is laid out on the map.

Q. And if these are actually strips, but under different ownership—I will repeat it—under different ownership—each of the blocks being under one ownership and all of these strips being under one ownership, would you say that those strips would only have a nominal value?

A. If you are taking it as a parcel, that whole——

Q. That is right? A. As acreage.

Q. Yes?

A. Then I would appraise it as acreage. [102]

Mr. Haas: That is all.

Redirect Examination

By Mr. Healy:

Q. I do not know that I quite understood the last question that Counsel asked you, the next to the last, and the answer that was given. Let me ask you, to clarify this a bit, Mr. Thomas, when you speak of one ownership, if this whole area, that is, the pink strips plus the lots in between were in one ownership—— A. Yes.

Q. And you were to appraise it, in your opinion you would arrive at a certain amount, and you think that that amount would be approximately one-fifth of what you previously appraised the whole acreage? A. Yes.

(Testimony of George H. Thomas, Jr.)

Q. Is that it?

A. With the distinct understanding that it was all in one ownership, the entire acreage.

Q. In other words, not subdivided, one ownership, a bulk piece of land? A. That is right.

Q. Would be approximately one-fifth of what you conceived it to be when it was cut up in lots and blocks with streets down through the lots and blocks?

A. As it is laid out and subdivided on the map; it has an entirely different value as a subdivision than it would be as an acreage.

Q. Mr. Haas asked you, I believe, what your opinion would be as to the value of these pink strips, whether they were streets or not, and I believe you told him that because of their peculiar shape, the long narrow shape, that they would still have only [103] a nominal value?

A. As far as fair market value, they would have a nominal market value of one dollar due to the utility, shape of the property?

Q. Due to the shape of the property?

A. There would be no use.

Mr. Healy: I think it is clear now, at least to me.

Recross-Examination

By Mr. Haas:

Q. When you say that due to the utility, the shape, there would be no use to these strips, may I ask whether in an ordinary block—take a block on upland—suppose you had a strip a foot wide

(Testimony of George H. Thomas, Jr.)

through the center of the block: Would you say that that has no utility in it?

A. That is right.

Q. Would it have any value?

A. Nominal value.

Q. In other words, if there is a building—

A. A nominal or a nuisance value.

Q. But that nuisance or nominal value might be very high, might it not?

A. Very limited, very nominal.

Q. Regardless of the position of that strip?

A. As far as fair market value is concerned. To go out and sell it in the open market to a willing buyer, not compelled to buy and a willing seller not compelled to sell, with a meeting of the minds and transfer of money, it would have a very limited market value.

Q. In other words, in your opinion the fact of these mixed [104] ownerships deprives the strips of value—that is, eliminating the possibility that they might be strips, might be streets—deprives the strips of value without depriving the blocks of value?

A. The streets or the strips or what they might be, the value is reflected in the abutting property because it makes it possible for ingress and egress and accessibility.

Q. If the value is not so reflected, then the value is more than nominal, is that right?

A. The value, the fair market value, is definitely nominal.

(Testimony of George H. Thomas, Jr.)

Q. Regardless whether the value is reflected in the adjoining strips or not?

A. I placed the value of the streets as reflecting into the abutting property because it gave the property access; but to go out and sell the streets, I do not know who you could sell them to. Who would be the buyer?

Q. In other words, your whole theory is based upon these being streets?

A. It is not theory.

Q. That is the basis of your appraisal?

A. It is practical judgment from years of experience.

Q. That is the basis of your appraisal though, is that right?

A. It is not theory; it is just—rarer than genius—common sense.

Q. And actually that is the basis of your appraisal, that these are streets and subject to the usual——

A. Streets, easements, roadways. [105]

Q. Let us take Block 709, which I will call your attention to here. You see a strip next to it, in front of that a blue strip, which faces on the non-proprietary property on the water as laid out. Would you say that that strip next to the other strip in state ownership has no value?

A. Yes, sir, a nominal value of one dollar.

Q. Regardless of the fact that it is right next to a strip available for the building of wharves?

A. That is right.

(Testimony of George H. Thomas, Jr.)

Q. And that is on the basis that the value of the strip is reflected in the wharves, is that right?

A. Makes it accessible to that, yes.

Q. In other words, the value is reflected in the wharves, is that right? A. Yes.

Q. Even though that value is only one dollar?

A. Yes.

Mr. Haas: Thank you. That is all.

Further Redirect Examination

By Mr. Healy:

Q. Mr. Thomas, when you speak of nominal value, do you mean a value of one dollar?

A. Yes, sir.

Q. One other point. You have given us your opinion as to the value of these areas indicated in pink on this exhibit if they were streets. Then you have also given us your opinion as to their value even they were not in contemplation of law streets. Do I understand your opinion to be that they are still only worth a dollar because of the non-utility of them due to their peculiar shape, their elongated shape? A. That is right. [106]

Mr. Healy: That is all, Mr. Thomas. With that evidence, your Honor, the United States rests its case.

(Plaintiff rests.)

Mr. Haas: May I suggest, your Honor, that this go over to the afternoon for argument?

The Court: Is this all the testimony that you are going to submit?

Mr. Haas: That is the testimony in the matter.

The Court: Do I understand, then, that the case it submitted on both sides as to the testimony?

Mr. Haas: As to the testimony?

Mr. Healy: Yes.

(Discussion as to the submission of the case, at the conclusion of which it was agreed that briefs would be submitted, the first by the State of California in twenty days, and the reply brief of the United States Government in fifteen days, and the reply brief of the State of California in five days.)

Certificate of Reporter

I, J. J. Sweeney, Official Reporter, certify that the foregoing 27 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

/s/ JOSEPH J. SWEENEY. [107]

[Endorsed]: No. 11797. United States Circuit Court of Appeals for the Ninth Circuit. State of California, Appellant, vs. United States of America, Appellee. State of California, Appellant, vs. United States of America, Appellee. State of California, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed November 22, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth District

No. 11797

STATE OF CALIFORNIA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER PERMITTING THE CONSIDERA-
TION OF THE ORIGINAL PAPERS AND
EXHIBITS CERTIFIED TO THE CIR-
CUIT COURT WITH LIKE EFFECT AS
IF PRINTED IN THE RECORD ON AP-
PEAL

It appearing to the court that the exhibits in the
above entitled matter consist of maps, diagrams and

original papers not capable of reproduction in the printed record, and it further appearing to the court that the said exhibits have been certified pursuant to order of the District Court as a portion of the record on appeal.

Now, Therefore, It Is Hereby Ordered that said copies of the original papers and exhibits, which have been certified to the Circuit Court of Appeals by the District Court, may be considered by this court with like effect as if said papers and exhibits had been printed in the record on appeal without the necessity of printing said papers and exhibits in the record on appeal.

Dated December 2, 1947.

FRANCIS A. GARRECHT,
Judge of the Circuit Court.

[Endorsed]: Filed Dec. 3, 1947. Paul P. O'Brien,
Clerk.